

2003 BCSECCOM 669

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – agreement with a shareholder of company subject to a take over bid to acquire remaining shares of another company entered into for reasons other than to increase the value of the consideration paid to that shareholder under a take over bid and may be entered into despite the prohibition on collateral agreements in the legislation

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF WHEATON RIVER MINERALS LTD., TECK COMINCO LIMITED, AND MIRANDA MINING CORPORATION

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Wheaton River Minerals Ltd. (“Wheaton River”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the provision in the Legislation that an offeror who makes or intends to make a take-over bid or issuer bid and any person or company acting jointly or in concert with the offeror must not enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (the “Prohibition on Collateral Benefits”), will not apply to the Teck Transaction (as

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defined below) in connection with the formal take over bid under the Legislation (the “Offer”) by Wheaton River, directly or through a newly-incorporated subsidiary, to purchase all of the issued and outstanding common shares (the “Shares”) of Miranda Mining Corporation (the “Company”);

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Offeror has represented to the Decision Makers that:
1. Wheaton River is a corporation incorporated under the laws of Ontario, is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador and is not in default of any provisions of the Legislation;
 2. the common shares of Wheaton River are listed for trading on the Toronto Stock Exchange and the American Stock Exchange;
 3. Wheaton River intends to incorporate a wholly-owned subsidiary under the laws of Ontario or another Canadian province or territory in order to effect the Offer (Wheaton River and the subsidiary are referred to as the “Offeror”); the subsidiary will not be and has no present intention of becoming a reporting issuer;
 4. Wheaton River will provide adequate funding to the subsidiary in order to permit it to complete the Offer;
 5. before the Offer, Wheaton River did not own any Shares;
 6. the Company was formed on November 21, 2001 by Articles of Arrangement, Articles of Amalgamation and a Certificate of Amalgamation under the provisions of the *Business Corporations Act* (Yukon) (the “YBCA”); the Company’s head office is in Vancouver, British Columbia;
 7. the Company is a reporting issuer in Alberta, British Columbia and Ontario;

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8. the Company's authorized capital consists of unlimited number of Shares without par value and an unlimited number of preferred shares without par value;
9. as of September 3, 2003, there were 71,902,535 Shares outstanding on a fully-diluted basis; as of September 3, 2003, there were no preferred shares issued and outstanding;
10. the Shares are listed on the TSX Venture Exchange;
11. the Company indirectly owns 30% of the issued and outstanding Shares of Minera Nuteck S.A. de C.V. ("Nuteck"); Teck Cominco Limited ("Teck") owns the remaining 70% of Nuteck's outstanding Shares through its subsidiary, Oroteck Mexico S.A. de C.V.; Nuteck holds a 100% interest in the Los Filos property located in the State of Guerrero, Mexico (the "Los Filos Property");
12. on May 28, 2003, the Company announced that its Board of Directors had initiated a review of alternatives to maximize shareholder value; in conjunction with the strategic review, the Company and Teck agreed to jointly offer the opportunity for a purchaser to acquire the Nuteck Interest (as defined below), and all of the Company's Shares as a package, enabling a purchaser to acquire 100% of Nuteck;
13. Wheaton River is advised that:
 - (a) the Company and Teck had, before entering into the negotiations with Wheaton River, negotiated at arms' length the basis on which consideration would be divided as between the Nuteck Interest and the Shares of the Company;
 - (b) Teck and the Company concluded that if they cooperated on the sale of Teck's interest in Nuteck and all of the Company's Shares, it would maximize value for Teck and the Company;
 - (c) the Company received financial advice from Macquarie North America Ltd. in connection with the allocation of the consideration between the Nuteck Interest and the Company's Shares;
14. on September 3, 2003, Wheaton River and the Company entered into an agreement (the "Agreement") which provides that the Offer will be made, for cash, to all holders of the Shares for an aggregate of US\$38.62 million for all the Shares (whether issued or issuable); this represents an amount of US\$0.537 per Share based on 71,902,535 Shares being outstanding on a fully-diluted basis;

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15. the Agreement provides that the consideration to be paid to Teck for its Shares deposited under the Offer is the same as the consideration to be paid to all other holders of Shares who deposit their Shares under the Offer;
16. the obligation of the Offeror to make the Offer is conditional upon the Offeror entering into a definitive agreement (the "Definitive Purchase Agreement") with Teck to purchase Teck's 70% interest in Nuteck (the "Nuteck Interest"), the owner of the Los Filos Property, for a cash purchase price of US\$48.4 million (the "Teck Transaction"); this condition is expressed to be for the sole benefit of Wheaton River and may be waived by Wheaton River;
17. on September 3, 2003, Teck and Wheaton River entered into an agreement concerning the terms of Wheaton River's purchase of the Nuteck Interest;
18. under Lock-up and Support Agreements, dated September 3, 2003, principal shareholders of the Company and Teck severally agreed with Wheaton River that they would support the Offer and would deposit and not withdraw all of the 43,517,641 Shares and any Shares resulting from the exercise of 710,000 convertible securities (the "Lock-up Shares") held by them under the Offer; the Lock-up Shares represent approximately 61.5% of the issued and outstanding Shares on a fully-diluted basis;
19. Teck also agreed separately with Wheaton River to cancel, for no additional consideration, 500,000 Special Warrants entitling it to acquire 500,000 Shares in certain circumstances;
20. the 2,400,000 Shares owned by Teck, which are included in the Lock-up Shares, represent approximately 3.33% of the issued and outstanding Shares on a fully-diluted basis;
21. under the Agreement, the obligation of the Offeror to complete the Offer, and take up the Shares deposited, is conditional on certain conditions including:
 - (i) the completion of the Teck Transaction in accordance with the terms of a Definitive Purchase Agreement;
 - (ii) the granting of this relief; and
 - (iii) 90% of the Shares then outstanding on a fully diluted basis, other than Shares held by the Offeror, having been deposited under the Offer and not withdrawn;

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22. the Board of Directors of the Company has received an opinion from Macquarie North America Ltd. that the consideration to be paid under the Offer is fair from a financial point of view to the Company's shareholders, and has unanimously recommended that the Company's shareholders accept the Offer;
23. following the completion of the Offer, the Offeror proposes to acquire any Shares which have not been tendered to the Offer, under the compulsory right of acquisition in the YBCA, if permitted to do so under the YBCA; if that right is not available, the Offeror may consider other ways to acquire, directly or indirectly, all of the Shares not deposited under the Offer;
24. except as set out in this decision, the Offer is being made in compliance with the applicable provisions of the securities laws of the Jurisdictions;
25. the Teck Transaction will not be entered into for the purpose of increasing the consideration to be paid to Teck for its Shares; the Teck Transaction will permit Wheaton River to secure 100% ownership, and therefore full control, of the Los Filos Property; the Teck Transaction is consistent with Wheaton River's primary focus on acquiring and operating precious metal properties; Wheaton River could only be assured of acquiring 100% of Nuteck by dealing with both Teck and the Company in accordance with their plan to market the Nuteck Interest and the Company together;
26. because the Company and Teck marketed the Nuteck Interest and the Company's Shares as a single package, only an aggregate purchase price was negotiated by Wheaton River; the allocation of the aggregate proceeds to be paid by Wheaton River between the Company's Shares and the Nuteck Interest was negotiated at arm's length between Teck and the Company before Wheaton River made the Offer; as Wheaton River did not influence the allocation of the proceeds as between the Nuteck Interest and the Company's Shares, Wheaton River could not confer a benefit on Teck (in its capacity as a shareholder of the Company) that was not conferred on the other shareholders of the Company;
27. Teck's interest in the Company (3.33% of the issued and outstanding Shares on a fully diluted basis) is not financially material to Teck in comparison to the value of the Nuteck Interest or material to Wheaton River in relation to the Offer;

¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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- ¶ 6 AND WHEREAS each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that, in connection with the Offer, the Teck Transaction is being made for reasons other than to increase the value of the consideration to be paid to Teck for its Shares under the Offer, and may be entered into despite the Prohibition on Collateral Benefits.
- ¶ 8 October 3, 2003

Brenda Leong
Director