

2002 BCSECCOM 1049

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for distributions of call options by investors, and distribution of securities on exercise of the call options – relief from the take-over bid requirements for the exercise of the call options

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110 and 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

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

AND

IN THE MATTER OF HIREDISK INC.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta and Ontario (the “Jurisdictions”) has received an application from HireDesk Inc. (“HireDesk”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
1. the dealer registration requirement and prospectus requirement in the Legislation (the “Registration and Prospectus Requirements”) do not apply to:
 - (a) the distribution of the Call Option (defined below) by the limited partners (the “Partners”) of HireDesk Limited Partnership (the “Partnership”) to HireDesk;
 - (b) the distribution of Exchanged Shares (defined below) as consideration or partial consideration for the acquisition of Units (defined below) of the Partnership on the exercise of the Call Option; or

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- (c) the distribution of Units by the Partners to HireDesk on the exercise of the Call Option by HireDesk;
 - (collectively, the “Non-Exempt Trades”); and
 - 2. the requirements in the Legislation relating to take-over bids (collectively the “Take-Over Bid Requirements”) do not apply to the acquisition of Units by HireDesk on the exercise of the Call Option;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission in the principal regulator in this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS HireDesk has represented to the Decision Makers that:
- 1. HireDesk is a corporation continued under the *Canada Business Corporations Act* and extra-provincially registered in British Columbia;
 - 2. HireDesk’s head office is located in British Columbia;
 - 3. HireDesk is in the business of providing recruiting software solutions to professional recruiters, corporate recruiters, human resource system vendors and job boards;
 - 4. the authorized capital of HireDesk consists of an unlimited number of common shares, of which 7,554,960 common shares are issued and outstanding;
 - 5. HireDesk is not, and has no current intention to become, a reporting issuer or the equivalent in any jurisdiction in Canada;
 - 6. the Partnership is a limited partnership created on May 16, 2002 under the *Partnership Act* (British Columbia) to provide executive management services to others for fees;
 - 7. the Partnership currently provides executive management services to HireDesk in the conduct of its business, including finance and accounting services, human resources management and recruitment, strategic planning, product strategies, technical support services, marketing support services and other support services;

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8. HireDesk is the general partner of the Partnership and manages the business and affairs of the Partnership;
9. the Partnership is authorized to issue an unlimited number of limited partnership units (the "Units"), of which one unit is issued and outstanding;
10. each Unit represents an equal interest in the Partnership, and is transferable only with the written consent of the general partner, HireDesk, and in accordance with the Legislation;
11. the Partnership has obtained a tax shelter identification number under the *Income Tax Act* (Canada) and it is expected that the holders of the Units will be able to realize certain income tax deductions as a result of operating losses expected to be incurred by the Partnership during the development of the Partnership's executive management services business;
12. the Partnership is not, and has no current intention to become, a reporting issuer or the equivalent in any jurisdiction;
13. the Partnership intends to offer a maximum of 2,500,000 and a minimum of 800,000 Units (the "Offering") at a price of \$1.00 per Unit under exemptions from the Registration and Prospectus Requirements in each of the Jurisdictions, with the proceeds of the Offering to be used to develop the Partnership's executive management service business;
14. all subscribers for Units under the Offering will purchase under the registration and prospectus exemptions contained in the Legislation applicable to purchases of securities made by "accredited investors" in Ontario, Alberta and British Columbia or under the "offering memorandum exemption" in Alberta and British Columbia, and, prior to the purchase of the Units, subscribers will receive an offering memorandum containing the information required by Form 45-103F1 regarding the Partnership and its business, as well as information relating to HireDesk and its business that would have been required had HireDesk been the issuer of Units;
15. in connection with each subscription agreement for Units, each subscriber of Units will grant to HireDesk an option (the "Call Option") to purchase all, but not less than all, of the Units;
16. HireDesk will have the right, but not the obligation, to exercise the Call Option at any time during the period commencing on January 1, 2004 and ending April 30, 2004 (the "Call Period");

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17. in the event that HireDesk undergoes a 'change of control' prior to the Call Period, HireDesk may exercise the Call Option for 45 days after the change of control (the "Accelerated Call Period");
 18. the purchase price payable for each Unit acquired on the exercise of the Call Option by HireDesk will be as follows:
 - (a) if the Call Option is exercised during the Call Period, at the option of HireDesk, either the issuance of one common share of HireDesk (an "Exchanged Share"), subject to adjustment in certain circumstances, or the payment of \$3.00 cash; or
 - (b) if the Call Option is exercise during the Accelerated Call Period, \$2.00 per Unit;
 19. until the Call Options are exercised or expire, HireDesk will send each holder of a Unit all disclosure material furnished to holders of HireDesk's common shares, including, but not limited to, copies of its annual report, interim financial statements and all proxy solicitation materials;
 20. HireDesk cannot rely on the registration and prospectus exemptions in the Legislation relating to the issuance of securities on the exercise of a right to purchase or otherwise acquire securities in accordance with the terms and conditions of a previously issued security of the issuer to issue the Exchanged Shares to the Partners on the exercise of the Call Option because the Units and the Call Option are not securities of HireDesk's own issue;
 21. in the event that HireDesk exercises the Call Option and offers to acquire at least 20% of the outstanding Units or where the number of Units to be acquired by HireDesk on the exercise of the Call Option when combined with the number of Units then held by HireDesk would represent at least 20% of the outstanding Units, such exercise of the Call Option would constitute a take-over bid for the Units for the purposes of the Legislation requiring compliance with the Take-Over Bid Requirements;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation provides the Decision Maker with the jurisdiction to make the Decision has been met;

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¶ 7 THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration and Prospectus Requirements do not apply to the Non-Exempt Trades provided that the first trade in a Call Option, an Exchanged Share or a Unit is deemed to be a distribution unless the conditions in section 2.5(3) of MI 45-102 *Resale of Securities* are satisfied; and
2. the Take-Over Bid Requirements do not apply to the acquisition of Units by HireDesk on the exercise of the Call Option.

¶ 8 DATED December 20, 2002

Brenda Leong
Director