

2004 BCSECCOM 487

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from prospectus and registration requirements in respect of certain trades by an issuer’s administrator, under the issuer’s employee option plan, in options of the administrator’s own issue to purchase securities of another issuer that are exchangeable into securities of the issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

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

AND

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

AND

IN THE MATTER OF VEDIOR N.V.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Alberta and British Columbia (the “Jurisdictions”) has received an application from Vedior N.V. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered to trade in a security and to file and receive a receipt for a prospectus (the “Registration and Prospectus Requirements”) shall not apply to the Applicant, the Stichting Administratiekantoor van gewone aandelen Vedior (the “Foundation”) and Vedior Equity Plans Services B.V. (the “Administrator”) with respect to certain proposed trades of options of the Administrator (“Options”) to purchase bearer depositary receipts issued by the Foundation (“BDRs”) and certain proposed trades of BDRs, from time to time, to employees of the Applicant in connection with the Applicant’s Framework Scheme Regarding the Grant of Options to Senior Management (as the same may be modified, amended, supplemented, restated or replaced from time to time, the “Plan”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the “System”), the Ontario Securities Commission is the principal regulator for this application;

2004 BCSECCOM 487

AND WHEREAS unless otherwise defined, the terms herein shall have the meanings set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant was incorporated on May 27, 1997 as a public limited company under the laws of the Netherlands. The Applicant is not a reporting issuer under the Legislation and has no present intention of becoming a reporting issuer under the Legislation.
2. The Applicant's authorized and issued share capital consists of (i) 320,000,000 ordinary shares ("Ordinary Shares"), each with a nominal value of €0.05, of which 164,622,659 were outstanding on December 31, 2003; (ii) 40,000,000 preference class A shares, each with a nominal value of €0.01, of which 34,323,680 were outstanding on December 31, 2003; and (iii) 36,000 preference class B shares, each with a nominal value of €100 of which 27,000 were outstanding on December 31, 2003.
3. In accordance with commercial practice in the Netherlands, the vast majority of the Ordinary Shares (approximately 97% of the Ordinary Shares) are held by the Foundation.
4. The Applicant is subject to the periodic reporting requirements under Dutch law and files annual and quarterly financial reports and other information required under applicable Dutch securities law with the Netherlands Authority for Financial Markets and the Euronext Amsterdam stock exchange. The Plan is subject to the regulatory oversight of the Netherlands Authority for Financial Markets.
5. The Foundation was incorporated on May 27, 1997 as a foundation under the laws of the Netherlands. The Articles of Association of the Foundation provide that its objects are, among other things, (i) to hold Ordinary Shares and exercise the voting and other rights attached thereto to safeguard the interests of the Applicant, the enterprise connected therewith and all parties concerned, so as to exclude, as far as possible, influences that could threaten, among other things, the continuity, independence and identity of the Applicant, and (ii) to issue BDRs exchangeable for Ordinary Shares.
6. The BDRs are listed on the Euronext Amsterdam stock exchange under the symbol "VDR". In addition, Options are traded on the Amsterdam Option Exchange under the symbol "VDR".

2004 BCSECCOM 487

7. Each BDR represents a financial interest in one Ordinary Share held by the Foundation. Each holder of a BDR has the right to attend the Applicant's general meetings of shareholders, either in person or represented by a person holding a written proxy, and to address such shareholders' meetings. With respect to any particular meeting of holders of Ordinary Shares, holders of BDRs may request that the Foundation issue a proxy appointing the BDR holder as proxy holder, which will allow the BDR holder to exercise the voting rights of the Ordinary Shares underlying the BDRs without decertifying their BDRs. In addition, holders of BDRs who register to attend a general meeting of shareholders of the Applicant are deemed to have requested a proxy from the Foundation, without having to file a specific request for such a proxy with the Foundation. In effect, BDR holders may exercise the voting rights of the Ordinary Shares underlying their BDRs when they have requested a proxy from the Foundation or registered to attend the shareholder meeting.
8. Holders of BDRs may exchange their BDRs for the underlying Ordinary Shares. The costs of such exchange will be for the account of the relevant BDR holder.
9. Dividends are only paid by the Applicant out of profits as shown in the annual accounts of the Applicant, subject to the approval of the Applicant's Supervisory Board. Upon receipt from the Applicant of any cash dividends, the Foundation will distribute the amount (less any tax withholdings to holders of BDRs in the same proportion). Subject to approval of the Applicant's Supervisory Board, the Applicant may offer holders of Ordinary Shares a choice between a distribution in Ordinary Shares or a distribution in cash. The Foundation will notify holders of BDRs of any such option and will make arrangements to offer corresponding cash or BDRs to BDR holders.
10. In the event of the Applicant's dissolution, the assets remaining after payment of all debts and expenses and satisfaction of amounts payable to holders of preference shares shall be distributed pro rata to the holders of Ordinary Shares.
11. As at June 7, 2004, the BDRs held by holders of record with addresses in Canada represented less than 10% of the number of outstanding BDRs and the number of holders of record with addresses in Canada was less than 10% of the total number of holders of record.
12. Pursuant to the Plan, Options may be granted to "Eligible Employees", being persons who are members of the Board of Management or a line

2004 BCSECCOM 487

employee of the Applicant or an affiliate, up to two levels below group management and/or zone management. Currently, there are six Eligible Employees resident in Ontario, two in Alberta and one in British Columbia.

13. Participation in the Plan is voluntary and Eligible Employees are not and will not be induced to participate in the plan by expectation of employment or continued employment.
14. The Administrator was incorporated on February 9, 2001 as a private limited company under the laws of the Netherlands. The Administrator grants Options to Eligible Employees. In addition, the Administrator's roles under the Plan may include: (a) signing and delivering notices to the Eligible Employees specifying, among other things, the number of Options awarded; (b) disseminating information and materials to the Eligible Employees in connection with the Plan; (c) assisting with the administration of, and general record keeping for, the Plan; (d) facilitating the payment of withholding taxes, if any, arising in connection with the Plan by selling BDRs on the Eligible Employee's behalf; and (e) facilitating the resale of the BDRs issued in connection with the Plan.
15. All grants of Options by the Administrator are made upon the recommendation of the relevant board (the "Relevant Board"), which is: (i) the Supervisory Board of the Applicant, in the case of grants to members of the Board of Management of the Applicant; and (ii) the Board of Management of the Applicant, in the case of grants to other Eligible Employees.
16. All Options must be exercised within a period of five to ten years.
17. Options are linked to the continued employment of the Eligible Employee by the Applicant or its affiliate. Options are personal to the Eligible Employee and may only be transferred by last will and testament or succession. Options lapse on the day such employment terminates, subject to the discretion of the Administrator (upon recommendation of the Relevant Board) permitting the Options to continue to exist. In the event of a change of control or liquidation of the Applicant, the outstanding Options will be exercisable immediately. Upon retirement of the Eligible Employee, any Options held are deemed to remain in force and any performance conditions attached to the Options are deemed to have been satisfied in full upon the date of retirement.

2004 BCSECCOM 487

18. When Options are exercised, the Applicant will issue new Ordinary Shares to the Foundation, which will issue BDRs representing the underlying Ordinary Shares to the Administrator for delivery to the Eligible Employee. The Administrator is not registered to trade securities in any jurisdiction in Canada and does not operate through the services of a registrant in any of the Jurisdictions.
19. The Eligible Employees resident in Canada (the “Canadian Participants”) will receive the same disclosure documents regarding the Plan as the Eligible Employees in jurisdictions outside of Canada. As well, Canadian Participants who become holders of BDRs will receive, or will have made available to them, the same or substantially similar disclosure documentation as that made available to BDR holders under the law of the Netherlands.
20. There is currently no market nor does the Applicant anticipate that one will develop for the BDRs within Canada. As a result, any resale of the BDRs will be made through the facilities of the Euronext Amsterdam stock exchange in accordance with the rules of such exchange.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers under the Legislation is that:

- (a) the Registration and Prospectus Requirements shall not apply to the following trades made in connection with the Plan:
 - (i) trades in Options by the Administrator to Canadian Participants; and
 - (ii) trades in BDRs by the Administrator to Canadian Participants upon the exercise of Options;

provided that the first trade in any such BDRs shall be a deemed distribution under the Legislation; and

2004 BCSECCOM 487

- (b) the Registration Requirement shall not apply to the first trade in any BDRs by a Canadian Participant acquired in connection with the Plan provided that:
 - (i) at the time the BDRs were issued to the Canadian Participant, Vedor was not a reporting issuer in any jurisdiction in Canada;
 - (ii) at the time the BDRs were issued to the Canadian Participant, residents of Canada,
 - (A) did not own directly or indirectly more than 10 percent of the outstanding BDRs, and
 - (B) did not represent in number more than 10 percent of the total number of owners directly or indirectly of BDRs; and
 - (iii) the BDRs are traded,
 - (A) through an exchange, or a market, outside of Canada; or
 - (B) to a person or company outside of Canada.

DATED July 27th, 2004.

Paul M. Moore

Suresh Thakrar