

2006 BCSECCOM 721

November 16, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The offeror is making the bid complying with the law of a jurisdiction that the Commission has not recognized for the purposes of s. 98(1)(e); the target does not maintain a share register, but the offeror believes the number of the target's shareholders in B.C. is de minimis; the bid will satisfy all other conditions required for an exempt take over bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-110, and 114(2)

In the Matter of
the Securities legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
MEIF II Energie Beteiligungen GmbH & Co. KG
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the formal take-over bid requirements contained in the Legislation, including the provisions

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relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the Take-over Bid Requirements) shall not apply to trades made in connection with the proposed offer (the Offer) by the Filer for the acquisition of all of the issued and outstanding shares (the Target Shares) in the capital of Techem AG with registered office in Eschborn, Germany (the Target).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a limited partnership incorporated under the laws of Germany. The Filer's registered office is located in Frankfurt, Germany.
2. The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions. The Filer's securities are not listed or quoted for trading on any Canadian stock exchange or market or anywhere else.
3. The Target is a German stock corporation with its registered office in Eschborn, Germany. The Target is one of Europe's leading providers of services to the housing and real estate industries.
4. The Target's registered office is located in Eschborn, Germany.
5. The Target's issued share capital registered in the commercial register amounts to €24,690,260 and is divided into 24,690,260 bearer shares without nominal par value, each representing a proportionate amount of the share capital of €1. The shares of the Target are admitted to trading on the official

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market (Prime Standard) of the Frankfurt Stock Exchange, under ISIN DE0005471601 and WKN 547 160. The shares are traded on XETRA and on the regulated unofficial regulated markets of the stock exchanges Hamburg, Stuttgart, Düsseldorf, Berlin-Bremen and Munich. The shares have been included in the MDAX index.

6. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target's securities are not listed or quoted for trading on any Canadian stock exchange or market.
7. On 23 October, 2006, the Filer announced its intention to make a voluntary public tender offer for the acquisition of all of the issued and outstanding Target Shares for cash consideration. The Filer intends to offer €44.00 per Target Share in cash. The implementation of the Offer and the purchase and ownership transfer agreements resulting from acceptance of the Offer will be subject to the satisfaction of certain conditions that will be set out in the Offer Document. The Filer currently does not own any of the Target Shares, however MEIF II Germany Holdings S.à.r.l., the general partner of the Filer, currently owns 3,558,101 Target Shares (approximately 14.4%).
8. The Offer is being made and the Offer Document reflecting the terms of the Offer is being prepared exclusively in accordance with the laws of the Federal Republic of Germany (in particular, in compliance with the German *Securities Acquisition and Takeover Act* and related statutory regulations), and in accordance with the provisions of Regulation 14E of the 1934 Act applicable to this Offer and applicable exemptions.
9. As permitted by German law, the Target has issued bearer securities and does not maintain a share register. Accordingly, any information about the Target Shares held by shareholders in Canada can only be determined on a limited enquiry basis. Pursuant to those inquiries, residency information was obtained in respect of 47.18% of the total outstanding shares in the capital of the Target. Based on such enquiry, the Filer believes that as of 6 October, 2006 there were four holders of shares in the capital of the Target resident in Canada, holding in total 151,500 Target Shares representing approximately 0.61% of the entire issued share capital of the Target. The Filer believes that all four of these shareholders are resident in the Province of Ontario. As a result of the fact that the Target has issued bearer shares, the Filer is unable to determine conclusively where the holders of the Target Shares reside.
10. The Offer Document has been submitted for review to the applicable securities regulatory authority in Germany. It is expected that the Offer Document will be published and made available to the holders of the Target

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Shares immediately after approval by the German regulator, which is currently expected on or around 16 November, 2006. In accordance with German law, the Offer Document (and a non-binding English translation) will be available on the Internet and a notification regarding the publication of the Offer Document will be published in a national German newspaper also specifying where and how the shareholders may obtain a copy of the Offer Document free of charge.

11. An announcement regarding the publication of the German Offer Document will be published in the *Börsen-Zeitung* in Germany. Copies of the Offer Document and its English translation will be available free of charge at the financial printer, RR Donnelley Frankfurt and at RR Donnelley New York. An announcement of the publication of the Offer Document and the availability of its English convenience translation will also be made in the U.S. edition of *The Wall Street Journal*, and will indicate the relevant email address and address for requesting the Offer Document.
12. While the Filer will also publish a non-binding English convenience translation of the Offer Document, the English translation has not been reviewed by the German Federal Financial Supervisory Authority, and the German Offer Document shall be the only binding offer document. Beyond that, as permitted under German law, the Filer does not expect to deliver any materials to the holders of the Target Shares in general (as the Target has issued bearer shares and does not maintain a share register or other record of the addresses of its shareholders). However, in the event that any material relating to the Offer is sent by the Filer generally to holders of the Target Shares in Germany, such material will also be sent to holders of Target Shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes.
13. A public announcement in a national Canadian newspaper and in a French language newspaper widely distributed in Québec, made at the same time as the public announcement in the national German newspaper or as soon as practicable after issuance of this order, will specify where and how the shareholders may obtain a copy of the Offer Document or an English convenience translation free of charge. As soon as practicable after such date, the Filer will also file a copy of the Offer Document with the local securities regulatory authority or regulator in each of the Jurisdictions.
14. In accordance with German law (the home jurisdiction of both the Filer and the Target), the Offer treats all shareholders (including Canadian holders) equally.

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Decision

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 the Filer is exempt from the Take-over Bid Requirements in making the Offer to the shareholders of the Target who are resident in the Jurisdictions provided that:

- (a) the Offer and all amendments to the Offer are made in compliance with the laws of the Federal Republic of Germany;
- (b) any material relating to the Offer that is sent by the Filer generally to the holders of the Target Shares in Germany will be sent by the Filer to the holders of the Target Shares resident in the Jurisdictions (if addresses are known), together with an English convenience translation, and copies thereof filed with the Decision Maker in each Jurisdiction; and
- (c) the Filer makes a public announcement in a national Canadian newspaper and in a French newspaper that is widely circulated in Québec specifying where and how holders of the Target Shares in the Jurisdictions may obtain a copy of the Offer Document (or an English convenience translation) free of charge, and files copies thereof with the Decision Maker in each Jurisdiction.

Carol S. Perry
Commissioner
Ontario Securities Commission

Suresh Thakrar
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