

2004 BCSECCOM 139

Headnote

Relief from take over bid requirements in connection with the purchase of 89% of the shares of a reporting issuer from a single seller located in BC – buyers unable to rely on statutory exemptions because the offer is being made to all security holders of the class

Exemption Order

Mark Shoom And Stephen Rider

Section 114(2) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Mark Shoom and Stephen Rider (the Offerors) applied for an exemption from the requirements of sections 105 to 110 of the Act (the take over bid requirements) in connection with the Offerors' offers to acquire an aggregate of 89% of the outstanding common shares of Fortress Financial Corporation (Fortress) from 613498 BC Ltd. (the Offeree).

Representations

- ¶ 2 The Offerors represent that:
1. each Offeror is an individual resident in the Province of Ontario;
 2. neither Offeror currently owns or exercises control or direction over any securities of Fortress;
 3. Fortress was incorporated under the *Company Act* (British Columbia) and is a reporting issuer in British Columbia, and is not in default of any requirement of the Act or the Securities Rules, B.C. Reg. 194/97;
 4. since August 30, 2001, Fortress has not carried on any active business;
 5. the authorized capital of Fortress consists of 100,000,000 common shares, of which 11,722,616 common shares are issued and outstanding;

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6. the Offeree was incorporated under the *Company Act* (British Columbia), with its executive offices located in Victoria, British Columbia;
7. the Offeree is the registered and beneficial owner of all of the outstanding common shares of Fortress;
8. the Offerors and the Offeree intend to enter into a purchase agreement, under which the Offerors intend to purchase an aggregate of 10,433,128 common shares of Fortress representing 89% of the outstanding common shares of Fortress, with 5,802,695 shares (or 49.5%) being purchased by Mark Shoom and 4,630,433 shares (or 39.5%) being purchased by Stephen Rider;
9. there is no public market for the securities of Fortress;
10. the Offerors' offers to acquire the Fortress shares from the Offeree have been negotiated at arms' length;
11. the purchase of the Fortress shares by each Offeror constitutes a take over bid within the meaning of the Act because the offer is being made to a person in British Columbia;
12. the Offeree does not need the protection of the take over bid requirements in connection with this transaction;
13. the Offerors cannot rely on the exemption available in section 164 of the Rules because they cannot state that the bid is not made generally to the security holders of the class of securities that is the subject of the take over bid, as required by that section.

Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 114(2)(c) of the Act that the Offerors are exempt from the take over bid requirements in connection with their purchases of the shares of Fortress from the Offeree.

¶ 4 March 4, 2004

Brenda Leong
Director