

2006 BCSECCOM 201

March 1, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 88 - Cease to be a reporting issuer in BC - Becomes a reporting issuer other than by exchanging its securities with a BC reporting issuer or its shareholders as set out in the item (d) of the definition of “reporting issuer” in section 1(1) of the Securities Act - The issuer's securities are traded only on a market or exchange outside of Canada - The only publicly held securities of the issuer are debt securities listed on a foreign exchange; Canadian residents own less than 2% of those debt securities; the issuer does not intend to do a public offering of its securities to Canadian residents; although the issuer will remain a reporting issuer in several Canadian jurisdictions, it has obtained relief from the continuous disclosure requirements in those jurisdictions; the issuer is subject to the reporting requirements of foreign securities laws

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and
Labrador and New Brunswick (the “Jurisdictions”)

and

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

and

In the Matter of Imperial Tobacco Canada Limited (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 Filer be deemed to have ceased to be a reporting issuer (the “Requested Relief”).

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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 – *Definitions* 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 validly subsisting company which results from the amalgamation of British American Tobacco (Canada) Limited and Imasco Limited (“Imasco”), through articles of amalgamation dated February 1, 2000, under the *Canada Business Corporations Act*, as part of a corporate restructuring of Imasco (the “Reorganization”).
2. The Filer’s head office is located at 3711 St-Antoine Street, Montreal, Quebec, H4C 3P6.
3. The Filer is a wholly-owned indirect subsidiary of British American Tobacco (“BAT”), a corporation incorporated under the laws of England.
4. Shares of BAT are currently listed on the London Stock Exchange. As such, BAT is a public company subject to European continuous disclosure requirements comparable to those of the Jurisdictions.
5. The Filer is a reporting issuer in each of the Jurisdictions and is thus subject to continuous disclosure requirements under the respective securities statutes of each of the Jurisdictions. The Filer is not in default of any of its continuous disclosure obligations.
6. Prior to the Reorganization, the common shares of Imasco were listed on the Toronto Stock Exchange, the Montreal Stock Exchange, and the Vancouver Stock Exchange. On February 1, 2000, as part of the Reorganization, all of Imasco’s issued and outstanding common shares were indirectly acquired by BAT.
7. The Filer remained a reporting issuer following the Reorganization as a result of having assumed Imasco’s public debt which, at the time of the Reorganization, consisted of notes and debentures issued pursuant to

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prospectuses (the “Canadian Securities”). The last of the Canadian Securities, which had been fully and irrevocably guaranteed by BAT, expired on November 15, 2005, and no other securities of any kind have been issued in Canada by the Filer since the Reorganization.

8. On November 13, 2001, the Filer issued €500,000,000 worth of 5.125% notes (the “Euro Notes”) and £217,000,000 worth of 6.5% notes (the “Sterling Notes”) in Europe (together, the “European Notes”), which will mature on November 14, 2006 and November 13, 2008, respectively.
9. The European Notes were issued by way of private placement on the European market and no European Notes were issued in Canada. The subscription agreement employed during the private placement contains specific restrictions which prevented the distribution of the European Notes in Canada during the placement. The existence of these restrictions was reflected in the information memorandum circulated to investors during the private placement.
10. In connection with the offering of the European Notes, the Filer filed a notice pursuant to section 12 of the *Securities Act* (Quebec), R.S.Q. c. V.1-1.
11. The European Notes are governed by two trust deeds governed by English law and are fully and irrevocably guaranteed by BAT.
12. Two securities depositaries were employed during the placement of the European Notes: Clearstream Services Luxembourg (“Clearstream”) and Euroclear Bank S.A. (“Euroclear”).
13. The European Notes are listed on the Luxembourg Stock Exchange and are therefore governed by the requirements of that exchange.
14. The Filer does not have any reporting issuer obligations under the securities legislation of the United States.
15. None of the Filer’s securities are traded on a marketplace in Canada as defined in National Instrument 21-101 – *Marketplace Operation*.
16. No other securities of the Filer are publicly held apart from the European Notes.
17. Certain features of the European market and of the European Notes themselves make it practically impossible for the Filer to confirm the number of Canadian European Note holders unequivocally.

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18. The Filer has nonetheless exercised its best efforts in attempting to ascertain the exact number of European Note holders resident in Canada.
19. Specifically, the Filer has sought and obtained confirmation from CIBC World Markets, National Bank Financial, BMO Nesbitt Burns, RBC Capital Markets, and TD Securities that none of their clients, with the exception of one individual, are holders of European Notes. The one reported Canadian holder, who is registered with RBC Capital Markets, holds €50,000 worth of Euro Notes, representing 0.006% of the entire issuance of European Notes.
20. Similarly, the Filer has also sought confirmation from Euroclear and Clearstream regarding the number of Canadian holders of European Notes represented in their records.
21. Together, Clearstream and Euroclear are able to confirm the nationalities of the holders of a combined €290,561,000 worth of Euro Notes, constituting 58% of the entire €500,000,000 issuance, of which €8,012,000 worth is confirmed to be held between two Canadian investors.
22. Together, Clearstream and Euroclear are also able to confirm the nationalities of the holders of a combined £92,039,000 worth of Sterling Notes, constituting 42% of the entire £217,000,000 issuance, of which £49,000 worth is confirmed to be held by one Canadian investor.
23. Expressed in Canadian dollars, Euroclear and Clearstream are thus together able to confirm the nationalities of the holders of CDN \$593,033,304 worth of debt, representing 52% of the Filer's CDN \$1,140,559,400 worth of European Notes. The amount of that debt which is confirmed to be Canadian-held totals CDN \$11,254,668, which is equivalent to 1.898% of the amount of debt in respect of which investor nationality can be confirmed. The Filer has no reason to suspect that this proportion is not representative of the remaining portion of the European Notes for which investor nationality cannot be confirmed.
24. Accordingly, the above confirmations support the conclusion that (a) residents of Canada do not hold more than 2% of the outstanding securities of the Filer; (b) residents of Canada do not represent more than 2% of the total number of holders of securities of the Filer; and (c) that there are fewer than 15 holders of the Filer's securities resident in any province and fewer than 51 in total resident in Canada.
25. The Filer has no current intention of distributing its securities in any jurisdiction in Canada through a public or private offering.

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26. The Filer has undertaken in favour of the securities regulatory authorities of the Jurisdictions that it will not, prior to November 13, 2008, distribute its securities in Canada pursuant to an exemption from the registration requirement and the prospectus requirement of the securities legislation of any jurisdiction in Canada.
27. The Filer has undertaken in favour of the securities regulatory authorities of the Jurisdictions that it will continue to comply with the all requirements of the Luxembourg Stock Exchange until the expiration of the European Notes.
28. The Filer has undertaken to issue and file a press release announcing that it has submitted an application to the Decision Makers to be deemed to have ceased to be a reporting issuer in the Jurisdictions.
29. Since the Filer cannot confirm unequivocally that it has fewer than 15 security holders whose addresses as shown in the records of the Filer are in Quebec, the Filer is unable to obtain an order under the securities legislation of Quebec to revoke its status as a reporting issuer. As such, an application is concurrently being filed with the *Autorité des marchés financiers* for an order exempting the Filer from the continuous disclosure requirements of the securities legislation of Quebec. By virtue of Multilateral Instrument 11-101 – *Principal Regulator System*, the granting of such relief in Quebec will also release the Filer from any continuous disclosure obligations in Manitoba, Newfoundland and Labrador, and Nova Scotia.

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 Requested Relief is granted.

Carol S. Perry
Ontario Securities Commission

Paul M. Moore, Q.C.
Ontario Securities Commission