

# 2004 BCSECCOM 453

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief granted from the prospectus requirement to permit issuer to rely on the short form offering document system without having a current AIF - CPC permitted to rely on its filing statement instead of a CPC information circular

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 61, 76

BC Instrument 45-509 *Short Form Offering of Listed Securities and Units by Qualifying Issuers*

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA**

**AND**

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

**AND**

## **IN THE MATTER OF GRD ENTERPRISES INC.**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from GRD Enterprises Inc. (“GRD”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the prospectus requirement contained in the Legislation (the “Prospectus Requirement”) shall not apply to a proposed distribution of securities by GRD to be conducted pursuant to a short form offering document;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for 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 GRD has represented to the Decision Makers that:

## 2004 BCSECCOM 453

- 4.1 GRD was incorporated on February 20, 2003 under the Business Corporations Act (Alberta);
- 4.2 the head office of GRD is located at Calgary, Alberta;
- 4.3 GRD
  - 4.3.1 is a reporting issuer under the Legislation and is not in default of its obligations under the Legislation; and
  - 4.3.2 is a “CPC” (capital pool company) as defined in TSX Venture Exchange (the “Exchange”) Policy 2.4 *Capital Pool Companies* (the “CPC Policy”);
- 4.4 GRD’s authorized capital consists of an unlimited number of common shares without par value (the “Common Shares”), of which 7,500,000 Common Shares were outstanding as at May 6, 2004 and up to 1,183,000 additional Common Shares are issuable upon the exercise of certain options to purchase Common Shares;
- 4.5 the Common Shares are listed and posted for trading on the Exchange;
- 4.6 under a letter agreement dated February 24, 2004, as amended, with Call Genie Inc. (“Call Genie”), an Alberta corporation, GRD has agreed to acquire all of the issued and outstanding shares of Call Genie (the “Qualifying Transaction”);
- 4.7 the Qualifying Transaction will constitute GRD’s “Qualifying Transaction” as defined in the CPC Policy;
- 4.8 completion of the Qualifying Transaction is subject to a number of conditions, including final acceptance of the the Qualifying Transaction by the Exchange;
- 4.9 in conjunction with the Qualifying Transaction, GRD proposes to distribute units (the “Units”) pursuant to a “Short Form Offering Document” as defined in Alberta Securities Commission Blanket Order 45-507 *Offerings by TSX Venture Short Form Offering Document* (“Alberta Order 45-507”) and in BC Instrument 45-509 *Short Form Offering of Listed Securities and Units by TSX Venture Listed Issuers* (“BCI 45-509”)(the “Short Form Offering Document”);

## 2004 BCSECCOM 453

- 4.10 pursuant to section 2.1 of the CPC Policy, since the Qualifying Transaction is not a “Non Arm’s Length Qualifying Transaction”, as defined in the CPC Policy, and shareholder approval is not otherwise required by law, GRD is not required to obtain shareholder approval of the Qualifying Transaction and therefore, in lieu of filing with the Exchange an information circular prepared in accordance with the CPC Policy (a “CPC Information Circular”) GRD has filed with the Exchange a “CPC Filing Statement”, as defined in the CPC Policy, prepared in accordance with Exchange Form 3B2 *Information Required in a Filing Statement for a Qualifying Transaction* (the “Filing Statement”);
- 4.11 the Filing Statement has been reviewed and approved by the staff of the Exchange and has been filed on SEDAR;
- 4.12 the Filing Statement is not an “AIF” as defined in Alberta Order 45-507 and BCI 45-509 because
  - 4.12.1 clause (a) of the definition of AIF is not applicable because a “current AIF” (a “Current AIF”) as defined in Multilateral Instrument 45-102 *Resale of Securities* effective November 30, 2001 (the “Old MI 45-102”) does not include a “CPC Filing Statement” as defined in the CPC Policy; and
  - 4.12.2 clause (b) of the definition of AIF is not applicable as the Filing Statement contains financial information only for a financial year starting before January 1, 2004;
- 4.13 Accordingly, GRD will be unable to rely on the exemptions from the Prospectus Requirement contained in section 3.1 of Alberta Order 45-507 and section 2 of BCI 45-509 for the purposes of distributing the Units (the “Distribution”)
- 4.14 in Old MI 45-102, the definition of Current AIF included a CPC Information Circular;
- 4.15 the Filing Statement includes the same disclosure concerning the Qualifying Transaction as would have been included in a CPC Information Circular, including the following:
  - 4.15.1 audited financial statements for GRD’s most recently completed financial year ended December 31, 2003;

## 2004 BCSECCOM 453

- 4.15.2 audited financial statements for Call Genie's most recently completed financial year ended December 31, 2003;
  - 4.15.3 a pro forma balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor; and
  - 4.15.4 detailed disclosure on both GRD and Call Genie and on the resulting issuer upon completion of the Qualifying Transaction;
- 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 that provides the Decision Maker with the jurisdiction to make the Decision has been met;
  - 7. THE DECISION of the Decision Makers under the Legislation is that the Prospectus Requirement shall not apply to the Distribution provided that:
    - 7.1 the Distribution complies with the requirements of Alberta Order 45-507 and BCI 45-509 other than
      - 7.1.1 the requirement to have filed a AIF; and
      - 7.1.2 the requirement to incorporate the AIF into the Short Form Offering Document;
    - 7.2 the Short Form Offering Document incorporates the Filing Statement by reference; and

for the purpose of this section 7, where the term AIF is referenced in Alberta Order 45-507 and BCI 45-509, it shall be deemed to be a reference to the Filing Statement.

DATED at the City of Calgary in the Province of Alberta this 7<sup>th</sup> day of July, 2004

Stephen P. Sibold, Q.C., Chair      Stephen R. Murison, Vice-Chair