

2005 BCSECCOM 105

February 3, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Corporate Acquisitions and Reorganizations - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution in connection with a corporate acquisition or reorganization - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer will distribute the shares of the other company as a dividend to the issuer's shareholders; the other company is not a reporting issuer; the issuer has a de minimis connection to Canada; the issuer is a reporting issuer in the US; the transaction complies with US securities laws

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba, Québec and Nova Scotia
(the Jurisdictions)

and

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

and

In the Matter of Cendant Corporation (the Filer)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting an exemption from the prospectus and dealer registration requirements (respectively, the Prospectus Requirements and the Registration Requirements) of the Legislation for the proposed distribution of all issued and outstanding common shares (the PHH Shares) of PHH Corporation (PHH) to holders of shares of common stock of the Filer (the Cendant Shareholders) resident in Canada (the Cendant Canadian Shareholders) by way of pro rata dividend in kind (the Requested Relief).

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2. Under the Mutual Reliance Review System for Exemptive Relief Application:
 - 2.1 the Alberta Securities Commission (the ASC) is the Principal Regulator for this application; and
 - 2.2 this decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* or in the Agence nationale d'encadrement du secteur financier Notice 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is a corporation constituted pursuant to the laws of the State of Delaware. The Filer is primarily a provider of travel and residential real estate services. Its headquarters are located in New York, New York.
 - 4.2 PHH, currently a wholly-owned subsidiary of the Filer, will own the Filer's mortgage and fleet operations.
 - 4.3 The Filer is not a reporting issuer under the securities laws of any province or territory of Canada and the Filer has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.
 - 4.4 PHH is not a reporting issuer under the securities laws of any province or territory of Canada other than Ontario and PHH has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada other than Ontario.
 - 4.5 The shares of common stock of the Filer (the Cendant Shares) are listed on the New York Stock Exchange (the NYSE). The Cendant Shares are not listed on any Canadian stock exchange and the Filer has no intention of listing its securities on any Canadian stock exchange.
 - 4.6 As of November 23, 2004, the Filer had approximately 53 registered Cendant Canadian Shareholders. There are registered and beneficial shareholders resident in each province of Canada other than New Brunswick, Prince Edward Island and Newfoundland and Labrador. As of November 23, 2004 (i) the Cendant Canadian Shareholders

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constituted less than 0.65% of the approximately 8,200 holders of record of Cendant Shares worldwide, and (ii) persons resident in Canada collectively held approximately 21,945 Cendant Shares, constituting less than 0.001% of the approximately 1.05 billion issued and outstanding Cendant Shares. As such, the proportion of issued and outstanding Cendant Shares held by Canadian residents is de minimis.

- 4.7 Subject to obtaining necessary approvals, on a distribution date to be fixed by the Filer's board of directors, the separation of PHH from the Filer will be accomplished through a pro rata distribution of all of PHH Shares to Cendant Shareholders (the Spin-Off). The Spin-Off consists of the following steps:
 - 4.7.1 the general terms and conditions relating to the distribution will be set forth in a distribution agreement between the Filer and PHH;
 - 4.7.2 as a result of the distribution, each Cendant Shareholder will receive one PHH Share for a number of Cendant Shares to be fixed by the Filer's board of directors;
 - 4.7.3 Cendant Shareholders will not be required to pay for PHH Shares received in the distribution or to surrender or exchange Cendant Shares in order to receive PHH Shares or to take any other action in connection with the distribution; and
 - 4.7.4 fractional shares of a PHH Share will not be issued to Cendant Shareholders as part of the distribution nor credited to book-entry accounts.
- 4.8 PHH debt is expected to remain investment-grade and Cendant's debt ratings are expected to be unaffected by the Spin-Off.
- 4.9 After the Spin-Off, Cendant Shares will continue to be listed and traded on the NYSE and PHH Shares are expected to be listed and traded on the NYSE.
- 4.10 The dividend and Spin-Off will be effected in compliance with the laws of the State of Delaware.
- 4.11 In January 2005 PHH filed a Form 8-A Registration Statement (the Form 8-A) and an information statement (the "Information Statement")

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detailing the planned Spin-Off with the United States Securities and Exchange Commission (the SEC).

- 4.12 Cendant Shareholders will receive a copy of the Information Statement filed with the SEC.
- 4.13 Because the Spin-Off of PHH Shares will be by way of dividend to the Cendant Shareholders, no shareholder approval of the proposed transaction is required under the laws of the State of Delaware.
- 4.14 All materials relating to the Spin-Off and the dividend sent by or on behalf of the Filer or PHH in the United States (including the Information Statement) have and will be sent, concurrently to the Cendant Canadian Shareholders.
- 4.15 Following the Spin-Off, each of PHH and the Filer respectively will send, concurrently to the Cendant Canadian Shareholders, the same disclosure materials that it sends to holders of PHH Shares and Cendant Shares with addresses, as shown on its books to be, in the United States.
- 4.16 The Cendant Canadian Shareholders who receive PHH Shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off as are available under the laws of the United States to PHH and Cendant Shareholders with addresses in the United States.
- 4.17 The proposed distribution of PHH Shares pursuant to the Spin-Off to the Cendant Canadian Shareholders would be exempt from the Prospectus Requirements and Registration Requirements in all Jurisdictions but for the fact that PHH is not a reporting issuer or equivalent under the Legislation.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the first trade of PHH Shares acquired under the decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless:

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- 6.1 except in Québec, the conditions in section 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied; or
- 6.2 in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission