

2003 BCSECCOM 440

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from requirement to provide an auditor’s consent as part of the take-over bid circular

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF RUSSEL METALS INC.

AND

ACIER LEROUX INC./LEROUX STEEL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Russel Metals Inc. (“Russel”), for a decision pursuant to securities legislation of the Jurisdictions (the “Legislation”), in connection with a take-over bid (the “Offers”) dated May 15, 2003 made by Russel and/or its wholly-owned subsidiary, Russel Acquisition Inc. (“RAI”, and collectively with Russel, the “Offerors”) to acquire all of the issued and outstanding shares (the “Shares”) and debentures (the “Debentures”, and collectively with the Shares, the “Securities”) of Acier Leroux Inc./Leroux Steel Inc. (“Leroux Steel”), that Russel be exempt from the requirement in the Legislation to include a consent of Leroux Steel’s former auditors, Arthur Andersen LLP (“Arthur Andersen”), to the incorporation by reference of the auditors’ report of Arthur Andersen on the financial statements of Leroux Steel for the fiscal year ended November 3, 2001 in the take-over bid circular (the “Circular”) accompanying and forming part of the Offers (the “Consent Requirement”);

2003 BCSECCOM 440

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 or in Quebec Commission Notice 14-101;

AND WHEREAS the Offerors having represented to the Decision Maker that:

1. Russel is a corporation existing under the laws of Canada. Russel is a reporting issuer or the equivalent in each of the Jurisdictions and its common shares are listed and posted for trading on The Toronto Stock Exchange (the “TSX”).
2. Leroux Steel is a corporation existing under the *Companies Act* (Québec).
3. The Offerors have made the Offers to acquire all of the issued and outstanding Securities, including any Shares issuable on the exercise of stock options or on the conversion of Debentures, for consideration consisting of:
 - (a) in the case of the Shares, at the option of each holder of Shares, (x) \$6.30 cash, (y) \$4.60 cash and one-third of one common share of Russel or (z) 1.2353 common shares of Russel for each Share, subject to proration in the event that the aggregate number of common shares of Russel otherwise issuable to all holders of Shares would exceed 3,612,672; and
 - (b) in the case of the Debentures, cash in an amount equal to par plus accrued and unpaid interest.
4. As Russel is offering to issue common shares as part of the consideration payable under the Offers, it is required to include in the Circular the information prescribed by the form of prospectus appropriate for Russel.
5. Russel is qualified pursuant to section 2.2 of National Instrument 44-101 (“NI 44-101”) to file a short-form prospectus in each of the Jurisdictions.
6. The proposed acquisition of the outstanding Securities of Leroux Steel constitutes a “significant probable acquisition” by Russel within the meaning of section 1.4 of NI 44-101. Accordingly, Russel is required to include or incorporate by reference in the Circular, among other things:

2003 BCSECCOM 440

- (a) the audited consolidated financial statements of Leroux and the notes thereto as at and for the fiscal year ended November 2, 2002, together with the report of the auditors thereon (collectively, the “Leroux 2002 Audited Financial Statements”); and
 - (b) the financial information as at and for the fiscal year ended November 3, 2001 as contained in the audited consolidated financial statements of Leroux and the notes thereto as at and for the fiscal year then ended, together with the report of the auditors thereon (collectively, the “Leroux 2001 Audited Financial Statements”).
- 7. The audit report in respect of the Leroux 2002 Audited Financial Statements was delivered by Deloitte & Touche LLP. The consent of Deloitte & Touche LLP as required by the Legislation and subsection 10.4(1) of NI 44-101 has been filed together with the Circular.
- 8. The audit report in respect of the Leroux 2001 Audited Financial Statements was delivered by Arthur Andersen.
- 9. On June 3, 2002, Arthur Andersen ceased practising public accounting. As a result, Arthur Andersen will no longer consent to the use of previously issued auditors' reports for purposes of securities filings.
- 10. The inability of Russel to obtain a consent letter from Arthur Andersen to the inclusion of its audit report on the Leroux 2001 Audited Financial Statements is an exceptional situation that is outside the control of Russel.
- 11. The Canadian Securities Administrators (the “CSA”) issued CSA Staff Notice 43-304, 62-302 and 81-308 *Prospectus Filing Matters – Arthur Andersen LLP Consent* (the “Andersen Notice”) to provide guidance to issuers with respect to the inclusion in, among other things, securities exchange take-over bid circulars of financial statements previously audited by Arthur Andersen.
- 12. The Andersen Notice states that CSA staff will consider applications from issuers to waive the requirement to obtain the consent of Arthur Andersen for audit reports relating to financial statements incorporated by reference in a prospectus, provided that the prospectus includes certain prominent disclosure.
- 13. In the absence of a consent from Arthur Andersen, Russel has included in the Circular the disclosure set forth in Appendix A hereto and included a cross-reference to such disclosure in the relevant paragraph of the list of documents incorporated by reference in the Circular.

2003 BCSECCOM 440

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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;

THE DECISION of the Decision Makers under the Legislation is that Russel is exempt from the Consent Requirement in connection with the Offers.

DATED this 11th day of June, 2003.

Paul M. Moore

Harold P. Hands

2003 BCSECCOM 440

APPENDIX A

“ Note with Respect to Arthur Andersen LLP

Arthur Andersen LLP is no longer engaged in the practice of public accounting in Canada. Accordingly, Russel Metals is unable to obtain the consent of Arthur Andersen LLP with respect to the incorporation by reference in the Circular of the auditors' report of Arthur Andersen LLP on the consolidated financial statements of Leroux as at and for the fiscal year ended November 3, 2001. Generally, in accordance with applicable securities legislation, holders of securities may only exercise a statutory right of action against a person or company that has prepared a report, opinion or statement that is included in a take-over bid circular if that person or company has filed a consent in respect of such report, opinion or statement and such right of action may only be exercised in respect of the report, opinion or statement that has been made by such person or company. As a result, the absence of a consent from Arthur Andersen LLP to the inclusion in the Circular of its auditors' report may limit the statutory right of action of Securityholders against Arthur Andersen LLP. Russel Metals is not aware of the extent to which there may be assets available, if any, to satisfy any judgment against Arthur Andersen LLP.”