

2002 BCSECCOM 926

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the take over bid requirements to permit a bid for an issuer that is no longer a closely held issuer – any bid will be done in accordance with a shareholders’ agreement

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ONTARIO AND ALBERTA

AND

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

AND

IN THE MATTER OF DUNHAVEN ENERGY INC. AND TANGO ENERGY INC.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Ontario and Alberta (the “Jurisdictions”) has received an application from Dunhaven Energy Inc. (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements in the Legislation relating to take over bids (the “Take Over Bid Requirements”) shall not apply to the acquisition of all of the Shares (as defined below) of the Filer (a “Take Over Bid Transaction”) by either Tango Energy Inc. (“Tango”) or any other buyer identified by the Filer’s board of directors (an “Alternative Offeror”);
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia 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* or in Québec Commission Notice 14-101;

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¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:

1. the Filer was incorporated under the Canada *Business Corporations Act* on September 1, 1995 and is registered as an extra-provincial corporation in British Columbia and Alberta;
2. the Filer's head office and records office is in British Columbia;
3. the Filer is not currently and has never been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange;
4. the Filer's authorized share capital consists of an unlimited number of common shares without par value and an unlimited number of preferred shares without par value, issuable in series, of which 10,000 preferred shares have been designated as Series "A" preferred shares;
5. the Filer has 24,748 common shares (the "Shares") and no preferred shares outstanding;
6. the Filer had 104 shareholders of record as of September 1, 2002, all of whom are residents of British Columbia, Alberta or Ontario (the "Shareholders");
7. the Filer distributed the Shares to persons resident in the Jurisdictions under an Offering Memorandum dated September 1, 1995 (the "Offering");
8. all of the Shareholders are the original subscribers under the Offering except for three Shareholders who acquired their Shares under estates on the death of the subscriber;
9. each subscriber under the Offering, and each transferee of Shares from a deceased subscriber, has entered into a shareholders' agreement dated November 30, 1995 (the "Shareholders' Agreement");
10. under the Shareholders' Agreement, the board of directors (the "Board") of the Filer was authorized after March 1, 1998, to negotiate and complete on behalf of the Shareholders a sale of all the outstanding Shares to an arm's length third party under certain terms and conditions;
11. each Shareholder has also given a power of attorney to the Filer to act on behalf of the Shareholder to transfer the Shareholder's Shares to effect such a sale;

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12. the Board has determined that it is in the best interests of the Shareholders to sell the Shares, and has complied with all the terms and conditions of the Shareholders' Agreement with respect to the sale of the Shares, including having determined an acceptable sale price of the Shares in accordance with the formula set out in the Shareholders' Agreement;
 13. the Filer has received an offer to acquire all of the Shares (the "Offer") in accordance with the Shareholders' Agreement from Tango, an arm's length Alberta corporation;
 14. if Tango does not complete the Offer, the Filer will seek an Alternative Offeror for the Shares and will comply with all the terms and conditions of the Shareholders' Agreement; and
 15. there are no exemptions from the Take Over Bid Requirements for a Take Over Bid Transaction by Tango or an Alternative Offeror;
- ¶ 5 AND WHEREAS under the System this MRRS Decision Document evidences the decision of each of the Decision Makers (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 Tango and any Alternative Offeror are exempt from the Take Over Bid Requirements provided that the Take Over Bid Transaction is done in compliance with the Shareholders' Agreement.
- ¶ 8 DATED November 8, 2002.

Brenda Leong
Director