

2005 BCSECCOM 608

September 16, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2), 114(2)(a)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, and Ontario (the Jurisdictions)

and

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

and

In the Matter of
Teal Energy Inc. (the Filer)

MRRS Decision Document

Background

1. 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, in connection with the offer (Offer) by the Filer to acquire all of the issued and outstanding common shares (GE Shares) and options (the GE Options) of Golden Eagle Energy Ltd. (Golden Eagle), the Employment Agreements (as defined below) are being made for reasons other than to increase the value of the consideration paid for those GE Shares and GE Options (collectively, the GE Securities) that are owned or controlled by the Management Security Holders (as defined below) and may be entered into

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notwithstanding the requirements contained in the Legislation which prohibit, in the context of a take-over bid, the entering into of any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner consideration of greater value than that offered to holders of the same class of securities (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - 2.1 the Alberta Securities Commission is the principal regulator for this application, and
 - 2.2 the MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 Definitions 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 was incorporated pursuant to the Business Corporations Act (Alberta) (the ABCA) on January 27, 1998.
 - 4.2 The Filer's head office is located in Calgary, Alberta.
 - 4.3 The Filer is not a reporting issuer in any jurisdiction of Canada and none of its securities are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation.
 - 4.4 Golden Eagle was amalgamated pursuant to the ABCA on June 15, 2004.
 - 4.5 Golden Eagle's head office is located in Calgary, Alberta.
 - 4.6 Golden Eagle is not a reporting issuer in any jurisdiction of Canada and none of its securities are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation.
 - 4.7 Golden Eagle has the following securities issued and outstanding as at September 7, 2005:
 - 4.7.1 20,539,893 GE Shares, and

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4.7.2 1,731,176 GE Options, each exercisable into one GE Share.

- 4.8 Pursuant to the terms of a pre-acquisition agreement dated July 25, 2005, as amended, between the Filer and Golden Eagle (the Pre-Acquisition Agreement), the Filer agreed with Golden Eagle that it would make the Offer pursuant to a securities exchange take-over bid.
- 4.9 The Offer was made by way of a take-over bid circular prepared in accordance with the Legislation (the TOB Circular) and mailed to all holders of GE Securities (the GE Security Holders) on August 26, 2005. The expiry date of the Offer is September 30, 2005.
- 4.10 The Offer is conditional on, among other things, there being validly deposited under the Offer and not withdrawn at the expiry time of the Offer at least 66 2/3% of the GE Securities.
- 4.11 The Filer has entered into lock-up agreements with Dr. R.C. (Bob) Mummery, Vice President, Exploration, of Golden Eagle (Mummery); Michael J. O'Byrne, Vice President, Land, of Golden Eagle (O'Byrne); Ronald B. Kinniburgh, Vice President and Chief Operating Officer of GE (Kinniburgh); C. Michael Ryer; Craig Steinke; Robert D. Penner; Ron Hietala; and Brian Lamb (collectively, the Locked-Up Shareholders), pursuant to which the Locked-Up Shareholders, who collectively represent approximately 36.5% of the GE Shares and approximately 95.1% of the GE Options, have agreed to tender all of their GE Securities to the Offer.
- 4.12 The Filer has entered into employment agreements (Employment Agreements) with each of Mummery, O'Byrne and Kinniburgh (the Management Security Holders) that will become effective upon the closing of the Offer (the Effective Date) at which time Mummery will be the Vice President, Exploration, of Teal; O'Byrne will be the Vice President, Land, of Teal; and Kinniburgh will be the Vice President, the Chief Operating Officer and a director of Teal.
- 4.13 The Employment Agreements provide that each of the Management Security Holders will receive a salary of \$120,000 for each year they are employed by the Filer and they will remain employed by the Filer until such time as the Employment Agreements are terminated by either the Filer or the Management Security Holders in accordance with the provisions of the Employment Agreements.

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- 4.14 The Employment Agreements also provide for commercially reasonable severance packages and a two-year restrictive covenant in the event that the Employment Agreements are terminated.
- 4.15 The Management Security Holders collectively hold an aggregate of 4,200,050 GE Shares representing approximately 20.4% of the issued and outstanding GE Shares and an aggregate of 1,167,132 of the GE Options representing approximately 67.4% of the issued and outstanding GE Options. Mummery and O'Byrne each individually hold 1,433,350 GE Shares and Kinniburgh holds 1,333,350 GE Shares. Each of the Management Security Holders individually holds 389,044 GE Options.
- 4.16 The purpose of entering into the Employment Agreements is to provide the Filer with a management team as it continues after the Effective Date and the Filer believes that the Management Security Holders' role with the Filer following the Effective Date is critical to the successful operation of the Filer.
- 4.17 Although the salaries to be paid to each of the Management Security Holders pursuant to the Employment Agreements are 25% greater than the salaries paid to them by Golden Eagle, the Filer believes that, since the Filer is a significantly larger entity and due to current market conditions in the oil and gas industry, the Employment Agreements are consistent with current industry practice and provide an incentive for the Management Security Holders to enter into the employment of the Filer following completion of the Offer.
- 4.18 The Filer would not have entered into the Pre-Acquisition Agreement if the Management Security Holders had not agreed to enter into the Employment Agreements.
- 4.19 The terms of the Employment Agreements have been negotiated at arm's length and on terms and conditions that are commercially reasonable.
- 4.20 The Employment Agreements have been made for valid business reasons unrelated to the Management Security Holders' holdings of GE Securities and not for the purpose of conferring an economic or collateral benefit that the other GE Security Holders do not enjoy or to increase the value of the consideration to be paid to the Management Security Holders for their GE Securities tendered under the Offer.

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- 4.21 The receipt by the Management Security Holders' compensation pursuant to the Employment Agreements is not conditional upon their support of the Offer.
- 4.22 The existence of the Employment Agreements was disclosed in the TOB Circular and the directors' circular of GE dated August 26, 2005.

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.

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

Stephen R. Murison, Vice-Chair
Alberta Securities Commission