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March 29, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -

Securities Act s. 114(2) Issuer Bids - Exemption from Issuer Bid Requirements - An issuer conducting an issuer bid under a modified dutch auction procedure requires relief from the requirement to take up and pay for securities deposited on a pro rata basis and the associated disclosure requirement - Under the modified dutch auction procedure, all shares deposited at prices above the clearing price will be returned to the shareholder instead of being taken up and paid for on a pro rata basis; shareholders who tender above the clearing price are not prepared to sell at the clearing price and so they suffer no prejudice if their shares are not taken up and paid for; returning their shares respects their intentions; shareholders who are prepared to sell at the clearing price are treated equally as their shares are taken up pro rata

Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid; after the bid, there will be a market for the issuer's securities that is not materially less liquid than before the bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105(g) and 114(2)

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

Form 62-903F, Item 9

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

and

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

and

In the Matter of
Sheritt International Corporation (the Filer)

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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 proposed purchases from time to time by the Filer of portions of its outstanding 7% Convertible Unsecured Subordinated Debentures due December 15, 2013 (the Debentures) under issuer bids, the Filer be exempt from the requirements in the Legislation to
- (a) take up and pay for securities proportionately according to the number of securities deposited by each securityholder;
 - (b) provide disclosure in the issuer bid circulars (the Circulars) of such proportionate take-up and payment; and
 - (c) except in Ontario and Québec, obtain a valuation of the Debentures and provide disclosure in the Circulars of the valuation, or summaries of the valuation (the Valuation Requirement);
- (collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System),

- (a) the British Columbia Securities Commission is the principal regulator for the Application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any requirement of the Legislation;
 - 2. the Filer's head office is in Toronto, Ontario;

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3. the Filer's authorized capital consists of an unlimited number of common shares of which 151,133,889 were outstanding as at February 28, 2006;
4. the Filer had Debentures in the aggregate principal amount of \$299,887,000 outstanding as at February 28, 2006;
5. the Debentures and the common shares trade on The Toronto Stock Exchange;
6. to the Filer's knowledge, no person or company holds more than 10% of the aggregate principal amount of outstanding Debentures;
7. on February 28, 2006, the closing price of the common shares on The Toronto Stock Exchange was \$10.17 and the closing price of the Debentures on The Toronto Stock Exchange was \$149.95 per \$100 principal amount of Debentures;
8. the Filer proposes to purchase Debentures from time to time through issuer bids, with an initial bid to acquire the aggregate principal amount of \$50,000,000 of Debentures, representing approximately 16.67% of the outstanding Debentures;
9. the Filer anticipates using cash on hand to acquire the Debenture under the bids;
10. the bids will be made under a Dutch auction procedure as follows:
 - (a) the Filer will specify in the Circular the maximum aggregate principal amount of Debentures (the Specified Amount) that the Filer intends to purchase and the range of prices (the Range) within which the Filer is prepared to purchase Debentures under the bid;
 - (b) holders of Debentures (the Debentureholders) wishing to tender to a bid will be able to specify the lowest price within the Range at which they are willing to sell their Debentures (an Auction Tender);
 - (c) Debentureholders wishing to tender to a bid but who do not wish to make an Auction Tender may elect to be deemed to have tendered at the Clearing Price determined in accordance with paragraph (d) below (a Purchase Price Tender);
 - (d) the purchase price (the Clearing Price) of the Debentures tendered to an Offer will be the lowest price that will enable the Filer to purchase the

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Specified Amount of Debentures and will be determined based upon the aggregate principal amount of Debentures tendered under an Auction Tender at each price within the Range and tendered under a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price in the Range for the purpose of calculating the Clearing Price;

- (e) the Filer will not ascertain the aggregate amount that it will expend under a bid until it has determined the Clearing Price;
 - (f) the Filer will take up and pay for all Debentures tendered at or below the Clearing Price under an Auction Tender and all Debentures tendered under a Purchase Price Tender at the Clearing Price, plus accrued and unpaid interest, subject to pro ration (calculated to the nearest whole \$1,000 principal amount of Debentures, so as to avoid the creation of fractional Debentures) if the aggregate principal amount of Debentures tendered at or below the Clearing Price under Auction Tenders and the aggregate principal amount of Debentures tendered under Purchase Price Tenders exceeds the Specified Amount;
 - (g) the Filer will return all Debentures tendered at prices above the Clearing Price to the appropriate Debentureholders;
 - (h) all Debentures tendered by Debentureholders who specify a tender price for such tendered Debentures that falls outside the Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by the Filer and will be returned to the tendering Debentureholders; and
 - (i) all Debentures tendered by Debentureholders who fail to specify any tender price for such tendered Debentures and fail to indicate that they have tendered their Debentures under a Purchase Price Tender will be considered to have been tendered under a Purchase Price Tender and will be dealt with as described in paragraph (f) above;
11. the Filer will not prepare a formal valuation in connection with the bids as the Filer will rely on the liquidity exemption that is available to it under Ontario Securities Commission Rule 61-501 and Autorité des marchés financiers Regulation Q-27 (the Liquidity Exemption);
12. before a bid expires, all information regarding the aggregate principal amount of Debentures tendered and the prices at which the Debentures are tendered will be kept confidential, and the Filer will direct the depositories to maintain confidentiality until the Clearing Price is determined;

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13. since each issuer bid will be for less than all the then-outstanding Debentures, if the aggregate principal amount of Debentures tendered to a bid at or below the Clearing Price exceeds the Specified Amount, the Legislation would require the Filer to

- (a) take up and pay for deposited Debentures proportionately, according to the principal amount of Debentures deposited by each Debentureholder, and
- (b) disclose in each Circular that the Filer would, if Debentures tendered to the particular bid exceeded the Specified Amount, take up the Debentures proportionately according to the aggregate principal amount of Debentures tendered by each Debentureholder;

14. the Circulars will:

- (a) disclose the mechanics for the take-up of and payment for, or the return of, Debentures as described in paragraph 10 above, and
- (b) explain that, by tendering Debentures at the lowest price in the Range, a Debentureholder can reasonably expect that the Debentures so tendered will be purchased at the Clearing Price, subject to proration as described in paragraph 10 above.

Decision

¶ 4 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 the Requested Relief is granted provided that:

- (a) Debentures tendered to the Offers are taken up and paid for, or returned to the Debentureholders, in the manner and circumstances described in paragraph 10 above,
- (b) in respect of the Valuation Requirement, the Filer relies on the Liquidity Exemption in Ontario and Québec, and

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- (c) this decision will terminate twenty-four months from the date of the decision.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission