

# 2005 BCSECCOM 743

December 5, 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 - A target requires relief from the requirement in section 109(1) of the Act to mail a directors' circular within the prescribed period after the date of the bid - The target is the subject of a bid by the offeror; the offeror has varied the terms of its offer and so must file and deliver a notice of variation; if the target is required to mail its directors' circular within the time set out in the Act, it will be based on a superseded offer; the offeror will file and deliver its directors' circular shortly after the offeror files and delivers its notice of variation; the target's shareholders will still have sufficient time to consider the bid and the directors' recommendation with respect to the bid

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 109 and 114(2)(b)  
*Securities Rules*, B.C. Reg. 194/97, s. 180(h)

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

and

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

and

In the Matter of  
Clarington Corporation  
(the "Filer")

## MRRS Decision Document

## Background

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

## 2005 BCSECCOM 743

connection with the Offer by Industrial Alliance Insurance and Financial Services Inc. (the “Offeror”), the Filer has applied to vary the time period for filing a directors’ circular (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

“Offer” means the take-over bid dated November 18, 2005 for all of the common shares of the Filer on a fully-diluted basis made by the Offeror.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The Filer’s head office is located in Toronto, Ontario. ClaringtonFunds Inc. (“CFI”), a wholly-owned subsidiary of the Filer, is registered as a mutual fund dealer and as a limited market dealer under the *Securities Act* (Ontario). It acts as the trustee and the manager of certain mutual funds, being the Clarington Funds and the Clarington Target Click Funds (collectively, the “Funds”). Securities of the Funds are sold in all of the Jurisdictions through registered dealers. The Filer owns all of the issued and outstanding shares of CFI.
2. The Filer is a reporting issuer under the Legislation in each of the Jurisdictions and is not on the list of defaulting issuers maintained in any Jurisdiction.
3. The common shares of the Filer are listed on The Toronto Stock Exchange (the “TSX”) under the symbol “CFI”.
4. The Offeror is a capital stock life insurance company that is incorporated, organized and validly existing under the *Companies Act* (Québec). The Offeror’s head office is located in Québec City, Québec. In addition to the *Companies Act* (Québec), the Offeror is governed by the *Act respecting insurance* (Québec) and the *Act respecting Industrial-Alliance Life Insurance Company* (Québec).

## 2005 BCSECCOM 743

5. The Offeror is a reporting issuer under the Legislation in each of the Jurisdictions and is not on the list of defaulting issuers maintained in any Jurisdiction.
6. The common shares of the Offeror are listed and posted for trading on the TSX under the trading symbol "IAG".
7. On November 20, 2005, the Offeror mailed a take-over bid circular dated November 18, 2005 with respect to the Offer to the Filer's shareholders (the "Take-Over Bid Circular"). The Offer expires on December 28, 2005.
8. After the close of trading on December 2, 2005, the Offeror exercised its right under the support agreement between the Offeror and the Filer to match or better a competing transaction by CI Financial Inc. ("CI") by announcing that it would increase the price offered under the Offer to \$15.00 per common share, with all other terms of the Offer remaining the same (the "Amended Offer"), and that it would mail to the Filer's shareholders a notice of variation (the "Notice of Variation") formally amending the Offer by no later than December 6, 2005. On December 4, 2005, the Offeror notified the Filer that it would mail the Notice of Variation on December 5, 2005.
9. The Filer is required, pursuant to the Legislation, to deliver a directors' circular in response to the Take-Over Bid Circular relating to the Offeror's original Offer of \$14.25 per common share (the "Directors' Circular") by December 5, 2005.
10. In light of the delivery deadline for the Directors' Circular relating to the Offeror's original Offer of \$14.25 per common share coinciding with the delivery of the Notice of Variation relating to the Offeror's Amended Offer of \$15.00 per common share, the Filer decided to make the application for the Requested Relief to extend the delivery deadline for the Directors' Circular to December 8, 2005. This will allow the Filer to provide an analysis of the Amended Offer in the Directors' Circular.
11. The Filer will issue and file a press release informing its shareholders that it will not be filing and delivering its Directors' Circular on December 5, 2005 but intends to do so on or before December 8, 2005.

### **Decision**

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.

## **2005 BCSECCOM 743**

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the Directors' Circular is filed and delivered on or before December 8, 2005.

Paul Moore  
Commissioner  
Ontario Securities Commission

Susan Wolburgh Jenah  
Commissioner  
Ontario Securities Commission