

2007 BCSECCOM 329

May 11, 2007

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 - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The offeror is making the bid complying with the law of a jurisdiction that the Commission has not recognized for the purposes of s. 98(1)(e); the target does not maintain a share register, but the offeror believes the number of the target's shareholders in B.C. is de minimis; the bid will satisfy all other conditions required for an exempt take over bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-110, and 114(2)

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

and

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

and

In the Matter of
Sapardis S.A.
(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 the formal take-over bid requirements in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-

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up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”) do not apply to the proposed cash offer (the “Offer”) by the Filer for all of the outstanding shares (the “Target Shares”) of Puma Aktiengesellschaft Rudolf Dassler Sport (“Target”) not already held by the Filer (the “Requested Relief”);

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (i) the Ontario Securities Commission is the principal regulator for this application; and
- (iii) this MRRS decision document evidences that 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.

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 French Republic. The object of the Filer’s business is: (i) the acquisition, management and sale of all types of securities of or participations in companies acting, inter alia, in the commercial, industrial, service or real estate sector, (ii) the promotion and management of all types of commercial companies, and (iii) the acquisition, management or sale of all types of real property or movable goods.
2. The Filer’s registered office is located in Paris, France.
3. The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions. The Filer’s securities are not listed or quoted for trading on any Canadian stock exchange or market.
4. Target is a corporation incorporated under the laws of the Federal Republic of Germany, with its common bearer shares (“Target Shares”) admitted for trading at the Official Market (*Amtlicher Markt*) of the Stock Exchanges of Frankfurt (Prime Standard) and Munich. Target and its subsidiaries are engaged in the development, design and sales of a broad range of sports and sportlifestyle products under the brand name “PUMA”.
5. Target’s registered office is located in Herzogenaurach, Germany.

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6. Target's issued and outstanding share capital consists of 15,963,714 Target Shares.
7. The Target Shares constitute "equity securities" for the purposes of the definition of "take-over bid" in the Legislation.
8. Target is not a reporting issuer or equivalent in any of the Jurisdictions. Target's securities are not listed or quoted for trading on any Canadian stock exchange or market.
9. On April 10, 2007, the Filer announced its decision to make a cash tender offer for all of the Target Shares not already held by it in exchange for €330.00 per Target Share. Immediately prior to the announcement of the Filer's intention to make the offer, the Filer held approximately 27% of the outstanding Target Shares.
10. The Offer is being made, and the offer document reflecting the terms of the Offer (the Offer Document") is being prepared, in accordance with the laws of the Federal Republic of Germany and, in particular, the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*, or the "WpUG"). It is made in compliance with the provisions of the statutory regulations based on the WpUG and in compliance with any applicable provisions of US securities law.
11. The Offer Document was submitted to the applicable securities regulatory authority in Germany on April 27, 2007 for review. The Offer Document is expected to be made available to holders of Target Shares after approval by the German regulator, on or about May 15, 2007. In accordance with German law, the Offer Document will be available on the internet under <http://www.ppr.com> (where a non-binding English convenience translation will also be available) and a public announcement in a national German newspaper will specify where and how the shareholders may obtain a copy of the Offer Document free of charge.
12. At the same time as the public announcement in the national German newspaper or as soon as practicable following the issuance of this decision, a public announcement in a national Canadian newspaper and in a French newspaper that is widely circulated in Québec will specify where and how holders of the Target Shares in the Jurisdictions may obtain a copy of the Offer Document (or a non-binding English convenience translation) free of charge. As soon as practicable after such date, the Filer will also file a copy of the Offer Document with the Decision Maker in each of the Jurisdictions.

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13. As permitted by German law, Target has issued bearer securities and does not maintain a share register. Accordingly, any information about shareholdings of Target Shares in Canada can only be determined on a limited enquiry basis by Target. Based on such enquiry, the Filer believes that, as of April 19, 2007, there are 7 holders of Target Shares resident in Canada (3 in Ontario, 1 in British Columbia and 3 in Quebec), holding an aggregate of 72,257 Target Shares representing approximately 0.50% of the Target Shares outstanding. However, as a result of the fact that the Target has issued bearer securities, the Filer is unable to determine conclusively in which Jurisdictions the 7 holders of Target Shares reside.
14. If any material relating to the Offer is required by law to be sent by the Filer to holders of Target Shares in Germany, such material will also be sent, as applicable, to holders of such shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes, and in any event will be concurrently filed with each Decision Maker.
15. In accordance with the laws of the Federal Republic of Germany (the home jurisdiction of the Target), all of the holders of Target Shares to whom the Offer is made, will be treated equally under the terms of the Offer.
16. The *de minimis* take-over bid exemption as provided for in the Legislation is not available to the Filer because the Offer is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemption. Also, because the Target does not maintain a share register, the Filer is unable to determine conclusively the number of holders of the Target Shares, resident in each of the Jurisdictions, or the number of such shares held by any such persons.

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (i) the Offer and all amendments to the Offer are made in compliance with the laws of the Federal Republic of Germany;

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- (ii) any material relating to the Offer and any amendments thereto that are sent to the holders of the Target Shares in Germany by the Filer, will be sent to the holders of the Target Shares resident in any of the Jurisdictions (if addresses are known), together with an English convenience translation, and copies thereof filed with the Decision Maker in each Jurisdiction; and
- (iii) the Filer makes a public announcement in a national Canadian newspaper and in a French newspaper that is widely circulated in Québec specifying where and how holders of the Target Shares in the Jurisdictions may obtain a copy of the Offer Document (or an English convenience translation) free of charge and files copies thereof with the Decision Maker in each of the Jurisdictions.

Kevin Kelly
Commissioner
Ontario Securities Commission

Suresh Thakrar
Commissioner
Ontario Securities Commission