

2006 BCSECCOM 395

June 29, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - 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 Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia 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
DataMirror Corporation
(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

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with the proposed purchase by the Filer of a portion of its outstanding common shares (Shares) by way of an issuer bid (the Offer), the Filer be exempt from the requirement in the Legislation of each of the Jurisdictions to obtain a formal valuation of the Shares (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this 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 incorporated under the *Business Corporations Act* (Ontario) with its head office in Markham, Ontario;
 - 2. the Filer is authorized to issue an unlimited number of Shares and preference shares, of which 8,294,140 Shares and no preference shares were outstanding as of April 28, 2006;
 - 3. the Filer is a reporting issuer in all provinces of Canada and, to its knowledge, is not in default of any requirement of the Legislation;
 - 4. the Shares trade on the Toronto Stock Exchange (the TSX) under the trading symbol DMC;
 - 5. to the knowledge of the Filer and based on publicly available information, the only shareholders that currently hold greater than 10% of the Shares are: (a) Nigel W. Stokes, Chairman, President and Chief Executive Officer of the Corporation, who holds 1,943,813 Shares, representing approximately 23.44% of the outstanding Shares; (b) Stadium Capital Management, LLC which holds 1,370,297 Shares, representing approximately 16.52% of the outstanding Shares; and (c) Natcan Investment Management Inc. which holds 1,636,546 Shares, representing approximately 19.73% of the outstanding Shares;

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6. the Filer intends to acquire up to 2,000,000 Shares under the Offer at a price of \$11.00 per Share;
7. all information regarding the number of Shares tendered will be kept confidential until the Offer expires;
8. the Filer intends to rely upon the exemptions from the valuation requirement in subsections 1.2(1)(b) and 3.4(3) of Ontario Securities Commission Rule 61-501 (Rule 61-501) and subsections 1.3(1)(b) and 3.4(3) of Quebec Regulation Policy Statement Q-27 (Q-27) (the Liquid Market Exemptions);
9. the Filer will not rely on the Liquid Market Exemptions in connection with the Offer unless (i) the Filer receives an opinion (the Opinion) that there is a liquid market in the Shares at the date the Offer is publicly announced from a company that is qualified and independent of all interested parties to the Offer, determined in accordance with subsection 1.2(1)(b)(ii) of Rule 61-501 and subsection 1.3(1)(b)(1) of Q-27; and (ii) the Opinion states that it is reasonable to conclude that, following the completion of the Offer, there will be a market for beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.
10. The Circular will:
 - (a) specify the number of Shares that the Filer intends to purchase under the Offer and the Purchase Price to be paid per Share;
 - (b) include the Opinion and the disclosure relating to the Opinion that the Filer is required to include to rely on the Liquid Market Exemptions, including disclosure that the TSX has sent a letter to the Directors of the Ontario Securities Commission and the Autorité des marchés financiers indicating concurrence with the Opinion; and
 - (c) contain the disclosure prescribed by Legislation for issuer bids, except to the extent exemptive relief is granted by this decision.

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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 the Filer can rely on the Liquid Market Exemptions and complies with representation 10.

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