

2005 BCSECCOM 208

April 5, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Rules s. 162(3) Exemption from the Requirement to Include a Formal Valuation of the Offeree Issuer in an Issuer Bid Circular - 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; subsequent to the bid, there will be a market for the issuer's securities that is not materially less liquid than prior to the bid

Applicable British Columbia Provisions

Securities Rules, ss. 162(2) and (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 Noranda 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 a proposed issuer bid (the Issuer Bid) by the Filer to repurchase up to 63,377,140 of its outstanding common shares (the Common Shares), the Filer be exempt from the requirements (the Valuation Requirements) in the Legislation to obtain a valuation of the Common Shares and provide disclosure of that valuation or summaries of it in the issuer bid circular (the Circular) required to be filed in connection with the Issuer Bid (the Requested Relief).

2005 BCSECCOM 208

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) the 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 corporation amalgamated under the *Business Corporations Act* (Ontario);
 2. the Filer's registered and head office is located at 181 Bay Street, Suite 200, BCE Place, Toronto, Ontario;
 3. the Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions;
 4. to its knowledge, the Filer is not in default of any requirement of the Legislation;
 5. the authorized capital of the Filer consists of an unlimited number of Common Shares, an unlimited number of preferred shares, issuable in series, and an unlimited number of participating shares; 297,094,967 Common Shares were outstanding as at March 8, 2005;
 6. the Common Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX) and the New York Stock Exchange;
 7. on March 9, 2005, the Filer announced its intention to make the Issuer Bid, pursuant to which the Filer proposes to offer to repurchase up to 63,377,140 Common Shares in exchange for an aggregate of up to 50,000,000 Junior Preference Shares of the Filer, comprised of U.S.\$500 million Series 1 Junior Preference Shares (the Series 1 Shares), U.S.\$500 million Series 2 Junior Preference Shares (the Series 2 Shares), and U.S.\$250 million Series 3 Junior Preference Shares (the Series 3 Shares), on the basis of 0.3156 Series 1 Share, 0.3156 Series 2 Share and 0.1578 Series 3 Share per Common Share;

2005 BCSECCOM 208

8. the Junior Preference Shares represent a new class of shares of the Filer, the creation of which requires approval by the holders of Common Shares;
9. if the shareholders do not approve the creation of Junior Preference Shares, the Filer will exchange the Common Shares repurchased under the Issuer Bid for three new series in its existing class of preferred shares to be designated Series J, K and L, which will effectively grant holders substantially the same rights and privileges as they would have been entitled to as holders of Junior Preference Shares;
10. the Filer has applied to list the Series 1 Shares, Series 2 Shares and Series 3 Shares on the TSX;
11. to the knowledge of the Filer, the only shareholder that holds more than 10% of the issued and outstanding Common Shares is Brascan Corporation and associated companies;
12. the Issuer Bid is being made in compliance with the requirements in the Legislation applicable to formal issuer bids, except to the extent exemptive relief is granted by this decision;
13. during the period of 12 months before March 9, 2005:
 - (i) the number of outstanding Common Shares was at all times at least 5,000,000, excluding Common Shares beneficially owned, or over which control or direction was exercised, by related parties of the Filer and Common Shares that were not freely tradeable;
 - (ii) the aggregate trading volume of Common Shares on the TSX was at least 1,000,000 securities;
 - (iii) there were at least 1,000 trades in Common Shares on the TSX;
and
 - (iv) the aggregate trading value based on the price of the trades referred to in clause (iii) above was at least \$15,000,000;
14. the market value of the Common Shares on the TSX was at least \$75,000,000 for the calendar month of February 2005;
15. the Filer has determined that it is reasonable to conclude that, following completion of the Issuer Bid, there will be a market for the beneficial owners of Common Shares who do not tender to the Issuer Bid that is not materially

2005 BCSECCOM 208

less liquid than the market that exists at the time the Issuer Bid is made and in support of this conclusion, the board of directors of the Filer received an opinion from its financial advisor, CIBC World Markets Inc.;

16. the Filer intends to rely on the exemptions from the valuation requirements contained in sections 3.4(3) of Ontario Securities Commission Rule 61-501 and Quebec Local Policy Statement Q-27; and

17. the Circular will contain the disclosure prescribed by Legislation for issuer bids, except to the extent exemptive relief is granted by this decision.

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.

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