

2007 BCSECCOM 688

October 26, 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 Securities Act - General - An issuer wants to complete a take over bid that meets some, but not all, of the conditions of the exemption set out in s. 98 (1)(d) of the Act (private issuer exemption) - The target company has more than 50 shareholders; the bid will satisfy all other conditions required for an exempt take over bid under s. 98(1)(d); all of the target's shareholders will be treated equally under the offer; the target's shareholders are all within the class of purchasers that private issuers may sell their securities to

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 98(1)(d) and 114(2)

In the Matter Of
the Securities Legislation of
Ontario and British Columbia
(the Jurisdictions)

and

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

and

In the Matter of
Dawson Creek Capital Corp.
(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 the take over bid requirements contained 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

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withdrawal rights, take-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 in connection with the acquisition of all the issued and outstanding shares of Lydian Resource Company Limited (Lydian) by the Filer (the Transaction) (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):
 - (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

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:
 - (a) the Filer is incorporated under the *Business Corporations Act* (Alberta) and is a reporting issuer in British Columbia, Alberta and Ontario;
 - (b) the Filer's head office is in Toronto, Ontario;
 - (c) the Filer's common shares are listed on the TSX Venture Exchange (the Exchange) and the Filer is classified as a "Capital Pool Company" under the policies of the Exchange;
 - (d) Lydian is incorporated under the laws of Scotland and is not, and has never been, a reporting issuer in any jurisdiction including Canada, nor are any of its securities listed or posted for trading on any exchange or marketplace;
 - (e) Lydian's head office is in Glasgow, Scotland;
 - (f) there is no published market for Lydian's securities;
 - (g) at the time of this Decision, Lydian has 30,604,328 common shares outstanding held by 111 shareholders, of whom

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- (i) 5 registered shareholders reside in British Columbia and hold 430,000 common shares or 1.4% of the outstanding common shares of Lydian;
 - (ii) 12 registered shareholders reside in Ontario and hold 1,020,000 common shares or 3.3% of the outstanding common shares of Lydian; and
 - (iii) the remaining shareholders reside in foreign jurisdictions and hold 29,154,328 shares or 95.2% of the outstanding common shares of Lydian;
- (h) All of Lydian's Canadian resident shareholders acquired their shares in reliance upon the registration and prospectus exemptions available in National Instrument 45-106 *Prospectus Exempt Distributions* that are applicable to directors, officers, and their family, close personal friends and close business associates, employees, consultants, and accredited investors;
- (i) 24 of Lydian's shareholders, holding 52.2% of Lydian's outstanding shares, are either insiders or employees of Lydian or accredited investors resident in Canada as defined in the Legislation;
- (j) the Transaction will constitute the Filer's "Qualifying Transaction" under the policies of the Exchange;
- (k) under the policies of the Exchange, the Filer must prepare a detailed disclosure document about the Transaction (the Disclosure Document), which will contain prospectus-level disclosure about the Transaction, Lydian and the resulting entity, assuming completion of the Transaction and will substantially comply with the requirements applicable to take-over bid circulars that are specified in the Take-over Bid Requirements;
- (l) the Filer will file the Disclosure Document with each of the Decision Makers and also deliver the Disclosure Document to each of Lydian's shareholders in Ontario and British Columbia;
- (m) the Transaction, as the Filer's Qualifying Transaction, will be subject to regulatory oversight of the Exchange and will be subject to the Exchange's sponsorship requirements;

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- (n) the Board of Directors of Lydian is expected to approve the Transaction prior to the Filer making its offer to acquire all the issued and outstanding shares of Lydian;
- (o) the Transaction will be subject to the shareholders holding over 80% of the shares of Lydian signing a formal, negotiated share exchange agreement that sets out all the terms and conditions of the Transaction;
- (p) the Filer will treat all of Lydian's shareholders equally under the Transaction;
- (q) no exemptions from the Take-over Bid Requirements are available to the Filer in connection with the Transaction; and
- (r) but for the fact that Lydian has greater than fifty shareholders, the proposed Transaction would otherwise satisfy all applicable conditions to qualify for an exemption from the Take-over Bid Requirements under the Legislation.

Decision

Each of the Decision Makers is satisfied that the test 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.

Carol S. Perry
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission