

2005 BCSECCOM 508

July 29, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 169 - Confidentiality - An issuer wants to keep certain information in material contracts confidential - The record provides intimate financial, personal or other information; the disclosure of the information would be detrimental to the person affected by having it disclosed; the information would be of limited value to any investment decision by the public

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 169 - Confidentiality

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova
Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island,
Northwest Territories, Nunavut and Yukon Territory (the Jurisdictions)

and

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

and

In the Matter of Somerset Entertainment Income Fund (the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker, and collectively the Decision Makers) in each of the Jurisdictions has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that certain portions of a schedule to a material contract, the Confidential Information (defined below), filed by the Filer in connection with a final long form prospectus (the Final Prospectus) be kept confidential (the Requested Relief).

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- Under the Mutual Reliance Review System for Exemptive Relief Applications,
- (a) the Ontario Securities Commission (the OSC) is the principal regulator for this application; and
 - (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Unless otherwise defined, the terms herein have the same meaning set out in National Instrument 14-101 *Definitions*.

Representations

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

1. On March 11, 2005, the Filer filed the Final Prospectus with each of the Jurisdictions. The OSC was designated as principal jurisdiction for the review of the Final Prospectus. Final MRRS decision documents, evidencing the issue of a final receipt by the securities regulatory authority in each of the Jurisdictions, were issued by the OSC on March 14, 2005 and on March 15, 2005 for Newfoundland and Labrador.
2. Under the Legislation, the Filer was required to file copies of all material contracts with the Final Prospectus on SEDAR.
3. In connection with the filing of the Final Prospectus, the Filer provided an undertaking to each of the Decision Makers that it would file, among other material contracts, an investment and acquisition agreement dated March 11, 2005 (the Investment and Acquisition Agreement) pursuant to which the Filer indirectly acquired all of the common shares of Somerset Entertainment Holdings Inc. (Somerset). In connection with the Investment and Acquisition Agreement, Somerset and its former shareholders prepared a disclosure letter (the Disclosure Letter) for the purposes of setting forth certain exceptions to some of the representations and warranties contained in the Investment and Acquisition Agreement and to provide certain additional disclosure called for by the terms of the Investment and Acquisition Agreement.
4. The Disclosure Letter contains certain personal and commercially sensitive information that would be seriously prejudicial to the interests of the Filer and others if publicly disclosed.
5. The Filer wishes to keep the information contained in the following schedule references of the Disclosure Letter confidential (the Confidential Information) and has redacted this information from the Disclosure Letter:

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- (a) 1.1(ww),
- (b) 1.1(hhh) column four,
- (c) 1.1(ppp),
- (d) 2.3(a),
- (e) 5.2(p),
- (f) 5.2(mm), and
- (g) 5.2(oo).

The above schedule references provide information concerning: (a) the parties to selected contracts, (b) the registration period for permitted encumbrances, (c) required change of control consents, (d) wire transfer instructions, (e) dividends paid by Somerset and an indirect share purchase by Somerset, (f) the ten largest customers of Somerset as of November 30, 2004 and (g) Somerset employee benefit plans.

6. Although the Disclosure Letter is referenced in the Investment and Acquisition Agreement, an investor does not need to review the Disclosure Letter in order to understand the substance of the Investment and Acquisition Agreement or the transactions contemplated thereby. More specifically, by reviewing the Investment and Acquisition Agreement, an investor will be able to understand (i) the nature of the representations and warranties provided by Somerset and its former shareholders in connection with the Filer's indirect acquisition of Somerset and (ii) the nature and extent of the Filer's potential recourse against Somerset and its former shareholders in the event of any breach or inaccuracy of such representations.
7. In connection with the Application, the Filer has filed with the Decision Makers a complete copy of the Disclosure Letter.
8. The Filer is not in default of any requirement of the Legislation.

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.

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

Erez Blumberger
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Ontario Securities Commission