

2004 BCSECCOM 687

November 23, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Securities Act s. 119 - Proxies/Information Circular Requirements

An issuer wants relief from the requirement to include disclosure in its information circular regarding executive compensation, indebtedness of directors, and securities authorized for issuance under equity compensation plans - The required disclosure is not relevant to the matters to be dealt with at the meeting for which the information circular is required; certain of the required disclosure is contained in a circular prepared, filed and sent to securityholders of the issuer in connection with the issuer's annual general meeting and there has been no material change to the required disclosure

An issuer wants to prepare and send a management information circular to its shareholders, in connection with a plan of arrangement, without providing financial statements prepared in accordance with Canadian GAAP - The financial statements that are required to be prepared in accordance with Canadian GAAP have been prepared in accordance with US GAAP, a set of standards that are fundamentally similar to Canadian GAAP and that are well-known and understood by Canadian investors; the issuer is permitted under NI 52-107 to file financial statements prepared in accordance with US GAAP; the issuer will comply with NI 52-107

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102, ss. 9.1 and 13.1

Form 51-102F5, Items 8, 9, 10 and 14

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

and

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

2004 BCSECCOM 687

and

In the Matter of
Alcan Inc. (Alcan or 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) and in Québec by a revision of the general order that will provide the same result as an exemption order (the Requested Relief) for:

- an exemption from the proxy circular disclosure requirements with respect to executive compensation, securities authorized for issuance under equity compensation plans and indebtedness of directors and officers (the Required Disclosure);
- an exemption from the requirement to incorporate by reference in a proxy circular, interim financial statements prepared in accordance with Canadian generally accepted accounting principles (GAAP) provided that such financial statements are presented in U.S. GAAP and comply with the Legislation.

Under the Mutual Reliance Review System for Executive Relief Applications

- (a) the Agence nationale d'encadrement du secteur financier (also known as Autorité des marchés financiers) is the principal regulator for this application, and
- (b) this MRRS decision document evidences the 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 predecessor corporation to what is today Alcan was incorporated on June 3, 1902. Alcan is governed by the *Canada Business Corporations Act* (the CBCA). Its registered address and principal place of business is located at 1188 Sherbrooke Street West, Montreal, Quebec H3A 3G2.

2004 BCSECCOM 687

2. The authorized and issued share capital of Alcan consists of common shares (the Alcan Common Shares), Series C Preference Shares and Series E Preference Shares (the Alcan Preference Shares). As of October 26, 2004, there were 369,023,618 Alcan Common Shares, 5,700,000 Series C Preference Shares and 3,000,000 Series E Preference Shares issued and outstanding.
3. Alcan is a reporting issuer (or the equivalent thereof) in the Jurisdictions and is not on the list of reporting issuers in default in any of the Jurisdictions in which such a list exists.
4. The Alcan Common Shares are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, and the London, Swiss and Euronext Paris stock exchanges under the stock symbol "AL".
5. Alcan is currently contemplating effecting a reorganization of its capital for the purpose of ultimately distributing to the holders of the Alcan Common Shares through a series of reorganization steps and transactions under a court-sanctioned plan of arrangement (the Plan of Arrangement), its rolled products businesses (the Arrangement).
6. The Arrangement is subject to a number of conditions, including the approval of the shareholders of Alcan. Alcan intends to call a special meeting (the Special Meeting) to consider a special resolution approving the Plan of Arrangement in accordance with the Plan of Arrangement.
7. Subject to the confirmation of the Quebec Superior Court, it is intended that the Arrangement will need to be approved by not less than two-thirds of the votes cast by the holders of the Alcan Common Shares and the Alcan Preference Shares (together, the Shareholders), voting as a single class, present in person or represented by proxy at the Special Meeting.
8. The management proxy circular of Alcan (the Circular) in connection with the Special Meeting will be mailed to the Shareholders in November 2004.
9. In March 2004, Alcan filed and mailed to the holders of Alcan Common Shares a proxy circular (the Annual Meeting Circular) dated March 3, 2004 in connection with its annual meeting of shareholders, which was held on April 22, 2004 (the Annual Meeting). The Annual Meeting Circular will be incorporated by reference in the Circular.
10. The disclosure regarding executive compensation and indebtedness of directors and officers was provided to the holders of the Common Shares of

2004 BCSECCOM 687

Alcan in the Annual Meeting Circular, and there has been no material change to such disclosure.

11. The disclosure regarding securities authorized for issuance under equity compensation plans required under item 9 of Form 51-102F5 of National Instrument 51-102 *Continuous Disclosure Obligations* was not required for the Annual Meeting Circular. However, substantially similar information for the year ended December 31, 2003 is available in the financial statements incorporated by reference in the Circular. The required disclosure will be made, following the implementation of the Arrangement, in the management proxy circular for the 2005 annual meeting of shareholders.
12. The Legislation requires that, subject to the relief referred to herein being granted, the Circular include the Required Disclosure.
13. The Required Disclosure is not relevant to a shareholder's decision whether or not to vote in favour of the Arrangement because the matters to be determined at the Special Meeting do not relate to the election of directors or an action to be taken with respect to the compensation of the directors, officers or employees of Alcan.
14. The Legislation states that the financial statements of a person or company that are included in a short form prospectus must be prepared in accordance with Canadian GAAP.
15. Alcan is a Securities and Exchange Commission issuer as defined in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107). As such, it currently complies with NI 52-107 and will continue to comply with same following the effective date of the Arrangement.

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.

Dated November 23, 2004

Jean St-Gelais
Président-directeur général