

2005 BCSECCOM 754

December 16, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Rules*, Section 162(3) - Exemption from the requirement to include a formal valuation of the offeree issuer in an insider bid circular - An issuer wants relief from the requirement to obtain a formal valuation in connection with its insider bid for the outstanding common shares of a target company - The offeror has not had any board or management representation with the target company in the last 12 months; the offeror does not have access to any material information concerning the target company or its securities that have not been publicly disclosed; the offeror can rely on exemptions from the requirement to obtain a valuation and disclose prior valuations in OSC Rule 61-501 or Québec Policy Q-27

Applicable British Columbia Provisions

Securities Rules, B.C. Reg. 194/97, Section 162(3)

In the Matter of
the Securities Legislation
of Alberta, British Columbia, 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 Maple Leaf Heritage Investments Acquisition Corporation
(the “Applicant”)

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 Applicant for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Applicant be exempt:

2005 BCSECCOM 754

- (a) in all of the Jurisdictions, from the requirement under the Legislation that a takeover bid circular in respect of an “insider bid” contain a summary of a valuation (the “Valuation Requirement”) of the offeree issuer, and
 - (b) in Manitoba, Nova Scotia and Newfoundland and Labrador, from the Valuation Requirement in connection with any second step business combination or going private transaction pursued by the Applicant
- (collectively, the “Requested Relief”).
- 2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”):
 - (a) the Alberta Securities Commission is the principal regulator for this application, and
 - (b) this MRRS decision document evidences the decision of each Decision Maker

Interpretations

- 3. Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

- 4. This decision is based on the following facts represented by the Applicant:
 - (a) On November 10, 2005, the Applicant made offers (the “Offers”) to purchase all of the issued and outstanding common shares (“Shares” and the Offer for Shares being referred to as the “Share Offer”) of Hudson’s Bay Company (“HBC”), together with the associated rights (“Rights”) issued and issuable under the shareholder rights plan of HBC, including Shares that may become outstanding on the exercise of options, warrants or other conversion or exchange rights (other than the Rights) at a price of \$14.75 per Share and all of the 7.50% convertible unsecured subordinated debentures due December 1, 2008 (the “Debentures” and the Offer for Debentures being referred to as the “Debenture Offer”) of HBC at a price of \$1,010 per \$1,000 principal amount of Debentures, plus accrued and unpaid interest to the date the Debentures are taken up under the Debenture Offer.
 - (b) The Applicant commenced the Offers by mailing the Offers and a take-over bid circular (the “Circular”), prepared in compliance with the Legislation and the securities legislation of the provinces of

2005 BCSECCOM 754

Canada other than the Jurisdictions, to all holders of Common Shares and holders of Debentures.

- (c) The Applicant is a corporation incorporated under the *Canada Business Corporations Act* (“CBCA”). The Applicant was created solely for the purpose of making offers for Shares and Debentures and has not carried on any material business or activity. The Applicant is an indirect subsidiary of True North Retail Investments I, Inc. (“True North I”), a corporation incorporated under the laws of Delaware, which is wholly-owned by Mr. Jerry Zucker.
- (d) Maple Leaf Heritage Investments ULC (“MLHI”), an affiliate of the Applicant, is an indirect subsidiary of True North I. True North I owns 9,962,900 Shares, or 14.3% of the outstanding Shares, and MLHI owns 3,125,000 Shares, or 4.5% of the outstanding Shares. The Applicant, together with persons acting jointly or in concert with the Applicant, owns no Debentures.
- (e) Because the Applicant and persons acting jointly or in concert with the Applicant beneficially own more than 10% of the outstanding Shares, the Share Offer is technically an “insider bid” for purposes of the Legislation.
- (f) The Share Offer is an unsolicited offer and the Applicant lacks access to relevant information that would enable the Applicant to satisfy the Valuation Requirement.
- (g) Neither the Applicant nor any persons acting jointly with the Applicant has, or has had within the past 12 months, any board or management representation in respect of HBC, or has knowledge of any material information concerning HBC or its securities that has not been generally disclosed.
- (h) Based on the facts represented in paragraphs (f) and (g), the Applicant, in making the Share Offer in Ontario, is relying on the exemption available, under subparagraph 2.4(1)(2) of OSC Rule 61-501, from the requirement comparable to the Valuation Requirement, and the Applicant has disclosed in the Circular that it is relying on such exemption and the facts supporting its reliance on such exemption.
- (i) In accordance with Section 6.8 of Rule 61-501, the Offeror has disclosed in the Share Offer and Circular that, after reasonable

2005 BCSECCOM 754

inquiry, it is not aware of any prior valuation (as such term is defined in Rule 61-501).

- (j) If, within 120 days after the date of the Share Offer, the Share Offer has been accepted by holders of not less than 90% of the issued and outstanding Shares other than Shares held by or on behalf of the Applicant and its affiliates and associates (as such terms are defined in the CBCA), and the Applicant has taken up and paid for such deposited Shares, the Applicant may elect to acquire the remainder of the Shares pursuant to the provisions of Section 206 of the CBCA, on the same terms as such Shares were acquired under the Share Offer (in each case, a “Compulsory Acquisition”). It is the Applicant’s current intention to exercise its right of Compulsory Acquisition if a sufficient number of Shares are tendered to the Offers.
- (k) If the Applicant acquires less than 90% of the Shares under the Share Offer or the right of Compulsory Acquisition is not available for any reason, or if the Applicant elects not to pursue such right, the Applicant may, if sufficient Shares are tendered to the Share Offer, pursue other means of acquiring, directly or indirectly, all of the Shares in accordance with applicable law, including, by way of example, by means of an arrangement, reclassification, consolidation, amalgamation, merger or other combination of HBC with the Applicant or one or more of the Applicant’s entities, on such terms and conditions as the Applicant, at the time, believes to be appropriate (each, a “Subsequent Acquisition Transaction”).
- (l) In connection with any Subsequent Acquisition Transaction, the Applicant intends to rely on the exemption available, under subparagraph 4.4(1)5 of OSC Rule 61-501, from the valuation requirement, in that:
 - (i) the business combination of HBC will be effected by the Applicant or an affiliate of the Applicant following the formal bid constituted by the Share Offer and will be in respect of Shares that will be the subject of the bid contemplated by the Share Offer;
 - (ii) the business combination will be completed no less than 120 days after the expiry of the Share Offer;
 - (iii) the consideration per Share paid by the Applicant or an affiliate of the Applicant in the business combination will be

2005 BCSECCOM 754

- (A) at least equal in value to the consideration per Share that is being paid under the Share Offer, and
- (B) in cash, which is the same form as the consideration per Share being paid by the Applicant under the Share Offer;
- (iv) the intent of the Applicant to effect a business combination is disclosed in the Share Offer and the Circular;
- (v) the Share Offer and Circular disclose:
 - (A) that if the Applicant acquires Shares under the Share Offer, the Applicant intends to acquire the remainder of the Shares under a Compulsory Acquisition or Subsequent Acquisition Transaction, and
 - (B) the expected tax consequences of the Share Offer and the Subsequent Acquisition, to the extent the Applicant knows them.

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 pursuant to the Legislation is that the Requested Relief is granted provided that the Applicant complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.

Mavis Legg
Manager, Corporate Finance