

2005 BCSECCOM 367

April 29, 2005

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 Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The bid is being done in compliance with the laws of a jurisdiction that has not been recognized for the purposes of s. 98(1)(e); the bid will satisfy all other conditions required for an exempt take over bid, except documents were not mailed to BC shareholders concurrently; offeror did not become aware of BC shareholders, or was not intending to extend the bid in Canada, until bid had already been commenced; offeror will take steps to make sure Canada shareholders are aware of the offer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-110, 114(2)

In the Matter of
the Securities Legislation of
Alberta, Manitoba, Saskatchewan, British Columbia, Ontario and Quebec
(the “Jurisdictions”)

and

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

and

In the Matter of
PurusCo A/S and EQT III Limited
(the “Filers”)

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 Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the formal 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

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notices of change or variation thereto, minimum deposit periods and 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 (the “Take-over Bid Requirements”) do not apply to the proposed take-over bid (the “Offer”) by PurusCo A/S (“PurusCo”) for all of the outstanding shares (“Shares”) of ISS A/S (the “Target”).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is selected as 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 Filers:

1. PurusCo is a Danish public limited company which was established for the purpose of conducting the Offer. PurusCo has not engaged in any commercial activities since it was established on March 11, 2005. PurusCo is the wholly-owned subsidiary of EQT III Limited, a limited liability company organized under the laws of the Bailiwick of Guernsey, Channel Islands.
2. Neither of the Filers is a reporting issuer or equivalent in any of the Jurisdictions. None of the securities of the Filers are listed or quoted for trading on any Canadian or foreign stock exchange or market.
3. The Target is a Danish company with its Shares listed on the Copenhagen Stock Exchange. The Target is a provider of facility services such as cleaning, property services, canteen services and office support services.
4. The Target’s head office is located in Copenhagen, Denmark.
5. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target’s securities are not listed or quoted for trading on any Canadian stock exchange or market.

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6. The Target's issued share capital consists of 47,335,000 Shares. As of December 31, 2004, 250,675 of the issued Shares were held in treasury and 47,084,325 Shares were outstanding. On December 31, 2004, the Target had approximately 18,000 shareholders recorded in its register of shareholders. There is only one class of Shares.
7. PurusCo has launched the Offer which became effective on March 29, 2005. Under the Offer, shareholders of the Target are offered DKK 470 (approximately Cdn\$98.90) in cash (as adjusted in accordance with the terms of the Offer) for each Share. The Offer represents a premium of approximately 31% over the trading price of the Shares on March 23, 2005, and a premium of approximately 55% over the most recent price per Share in the Target's most recent share issue on December 9, 2004.
8. The Offer, including the Offer to residents in the Jurisdictions, is scheduled to expire on May 3, 2005.
9. Pursuant to Danish take-over bid rules, following the expiration of the Offer, a further offer (the "Mandatory Offer" and, together with the Offer, the "Offers") may be required to be extended to remaining shareholders of the Target on the same terms and conditions as the Offer.
10. The Offer has been made, and the Offer circular reflecting the terms of the Offer (the "Circular") has been prepared, in accordance with the laws of Denmark and, in particular, the Danish Securities Trading Act and the Danish Executive Order on the Obligation to Submit Offers, on Mandatory Bids and Voluntary Bids, and on Shareholders' Obligations to Disclose Information (collectively, "Danish Law"). The Circular was filed with, and approved by, the Copenhagen Stock Exchange on March 28, 2005. The Circular has also been filed with the Decision Makers.
11. Under Danish Law, the Target has no obligation to disclose the list of its registered security holders and PurusCo was consequently unable to obtain a comprehensive list of shareholders of the Target. Furthermore, the Target states in its 2004 annual report that 27% of its shareholders hold unregistered shares.
12. When the bid was launched, there was no way to determine the Canadian shareholder base of the Target. Canadian securityholders were excluded from participating in the Offer because of (i) the inability to determine the jurisdiction of residence of such securityholders, (ii) the lack of a clear exemption for extending the Offer into Canada, and (iii) the perceived additional expenses involved in conforming the Offer materials to local

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provincial securities law. Subsequently, PurusCo has become aware that a significant shareholder of the Target, the Franklin Templeton Group (“Templeton”), holds a portion of its Shares through funds resident in certain of the Jurisdictions. Templeton has irrevocably undertaken, subject to the terms and conditions of the Offer and certain other conditions, to accept the Offer in respect of its entire shareholding. At the time of entering into this irrevocable undertaking, PurusCo was not aware that Templeton related funds resident in any of the Jurisdictions held Shares.

13. For the reasons described above in paragraph 11, since the date of commencement of the Offer PurusCo has been unable to determine the exact shareholding of Canadian residents. PurusCo has been able to approximate the following shareholder information for Canada with respect to the Target after due inquiry of the Target (which elicited simply the response that such information would not be provided), investigation of public listing sources and consultation with Templeton:

Jurisdiction	Number of Shareholders of Target	Number of Shares Held	Percentage of Outstanding Shares
Ontario	7	1,429,112	3.04
Alberta	1	11,123	0.02
British Columbia	1	13,401	0.03
Manitoba	1	59,900	0.13
Prince Edward Island	1	7,800	0.02
Quebec	3	69,521	0.15
Saskatchewan	1	17,100	0.04
Totals	15	1,607,957	3.43

14. All material relating to the Offer that is accessible to holders of the Target’s Shares in Denmark will be made accessible to holders of such Shares residing in the Jurisdictions, including an English convenience translation.
15. The *de minimis* exemption is not available to the Target since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the Decision Makers for the purposes of the *de minimis* exemption. Also, because PurusCo does not have access to the Target’s shareholder list, PurusCo is unable to determine conclusively the number of holders of Shares resident in each of the Jurisdictions, or the number of Shares held by any such persons.

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16. All of the holders of Shares to whom the Offer is extended, including shareholders resident in the Jurisdictions, will be treated equally and shareholders resident in the Jurisdictions will be entitled to participate in the Offer on the same terms and conditions as those extended to shareholders resident in Denmark.
17. On April 14, 2005, a public announcement of the Offer was made in a national Canadian newspaper. This public announcement specified how shareholders of the Target may obtain a copy of the Circular and provided summary information relating to the Offer.

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 Filers are exempt from the Take-over Bid Requirements in connection with the Offers made to holders of Shares in the Jurisdictions provided that:

- (a) the Offers, and all amendments to the Offers, are made in compliance with Danish Law; and
- (b) all material relating to the Offers sent to holders of Shares in Denmark will be concurrently sent to the holders of Shares resident in the Jurisdictions whose addresses are known to the Filers, including an English convenience translation, and copies thereof concurrently filed with the Decision Maker in each Jurisdiction.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Robert W. Davis
Commissioner
Ontario Securities Commission