

2008 BCSECCOM 39

October 24, 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 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)(d) of the Act required for an exempt take over bid - 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 receive the same consideration under the offer

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia, Saskatchewan, Ontario,
and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System

and

In the Matter of
540 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 do not apply in connection with the acquisition of all the issued and outstanding shares of Golden Dory Resources Limited (Golden Dory) by the Filer (the Transaction) (the Requested Relief).

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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

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 Filer:
 - (a) The Filer is incorporated under the *Business Corporation Act* (Alberta) and is a reporting issuer in British Columbia and Alberta.
 - (b) The Filer's head office is in Calgary, Alberta.
 - (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) Golden Dory is incorporated under the *Corporation Act* (Newfoundland) and Labrador and is not and has never been a reporting issuer in any jurisdiction in Canada. Golden Dory's securities have never been listed for posting or trading on any exchange or marketplace.
 - (e) Golden Dory's head office is in Gambo, Newfoundland.
 - (f) There is no published market for Golden Dory's securities.
 - (g) Golden Dory has 9,361,000 common shares (the Common Shares) outstanding held by 61 shareholders (the Shareholders), of whom:
 - (i) 15 reside in British Columbia and hold 1,513,000 Common Shares;
 - (ii) 15 reside in Ontario and hold 2,219,000 Common Shares;
 - (iii) 3 reside in Saskatchewan and hold 60,000 Common Shares;

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- (iv) 27 reside in Newfoundland and hold 5,469,000 Common Shares; and
- (v) 1 resides in a foreign jurisdiction and holds 100,000 Common Shares.
- (h) All of the Shareholders purchased their shares under the exemptions from the registration and prospectus requirements available under the Legislation for directors, officers, and their family, close personal friends and close business associates, employees, consultants, accredited investors and mineral property vendors.
- (i) The Transaction will constitute the Filer's "Qualifying Transaction" under the policies of the Exchange.
- (j) 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, in compliance with the take-over bid requirements of the Jurisdictions, about the Transaction, Golden Dory and the resulting entity upon completion of the Transaction.
- (k) The Filer will deliver the Disclosure Document to all of the Shareholders.
- (l) The Filer intends to seek the approval of its board of directors as soon as practicable after negotiations are complete.
- (m) The Transaction will be subject to the Shareholders holding over 90% of the shares of Golden Dory signing a formal, negotiated share exchange agreement that sets out all the terms and conditions of the Transaction.
- (n) The Filer will treat all of the Shareholders equally under the Transaction.
- (o) There are no other exemptions from the take-over bid requirements of the Legislation available to allow for the Transaction.
- (p) But for the fact that Golden Dory has more than 50 Shareholders, the proposed Transaction would otherwise satisfy all applicable conditions to qualify for an exemption pursuant to take-over bid Legislation.
- (q) Pursuant to the compulsory acquisition procedures, if the Filer receives acceptances under the Transaction in respect of 90% or more of the Common Shares subject to the Transaction and the Transaction becomes or is declared unconditional in all respects, the Filer will automatically be entitled to purchase the remaining Common Shares subject to the

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Transaction regardless of whether those Shareholders elect to tender such Common Shares to the applicable Transaction.

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.

David L. Knight
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission