

2003 BCSECCOM 442

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the identical consideration requirement to permit cash payment instead of common shares to holders, residents in the United States and another foreign jurisdiction

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF SHAKER RESOURCES INC. AND PETROFLOW ENERGY LTD.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, and Ontario (the "Jurisdictions") has received an application from Shaker Resources Inc. ("Shaker") for a decision under the securities legislation of the Jurisdictions (the "Legislation") exempting Shaker from the requirement contained in the Legislation that when a take-over bid is made, all the holders of securities that are of the same class shall be offered identical consideration (the "Identical Consideration Requirement") in connection with an offer by Shaker to purchase the outstanding common shares and multiple voting shares of Petroflow Energy Ltd. ("Petroflow");
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS Shaker has represented to the Decision Makers that:

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- 4.1 Shaker is a public company incorporated under the *Business Corporations Act* (Alberta) (the "ABCA");
- 4.2 Shaker's head office is located in the Province of Alberta;
- 4.3 Shaker is a reporting issuer in British Columbia and Alberta and not in default of any of the requirements of the Legislation;
- 4.4 the authorized capital of Shaker consists of an unlimited number of common shares (the "Common Shares") of which as of April 11, 2003, there were 16,113,000 Common Shares outstanding;
- 4.5 the Common Shares are listed on the TSX Venture Exchange;
- 4.6 Shaker is not eligible to use the multijurisdictional disclosure system pursuant to National Instrument 71-101 Multijurisdictional Disclosure System;
- 4.7 Petroflow is a public company incorporated under the *Business Corporations Act* (Canada);
- 4.8 Petroflow's head office is located in the Province of Nova Scotia;
- 4.9 Petroflow is a reporting issuer in British Columbia, Alberta, and Ontario, and is not in default of any of the requirements of the Legislation;
- 4.10 the authorized capital of Petroflow includes an unlimited number of Class A subordinate voting shares (the "Subordinate Voting Shares"), an unlimited number of Class B multiple voting shares (the "Multiple Voting Shares" and together with the Subordinate Voting Shares, the "Petroflow Shares") and an unlimited number of preferred shares, issuable in series, of which, as of April 11, 2003, there were 17,214,694 Subordinate Voting Shares, and 2,625,013 Multiple Voting Shares outstanding;
- 4.11 the Subordinate Voting Shares are listed on the TSX Venture Exchange Inc.;

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- 4.12 effective April 11, 2003, Shaker and Petroflow entered into a pre-acquisition agreement (the “Pre-acquisition Agreement”) pursuant to which Shaker agreed to make a take-over bid (the “Bid”) for all of the outstanding Petroflow Shares on or about April 30, 2003;
- 4.13 the Pre-acquisition Agreement was amended to allow Shaker to make the Bid before May 7, 2003;
- 4.14 on May 5, 2003 Shaker made the Bid;
- 4.15 the Bid was made in compliance with the Legislation except to the extent that relief is required in respect of the Identical Consideration Requirement;
- 4.16 under the terms of the Bid, the price to be paid to holders of Petroflow Shares resident in Canada is one Common Share for each 13.68 Petroflow Shares;
- 4.17 the Common Shares issuable under the Bid to holders (the “U.S. Shareholders”) of Petroflow Shares resident in the United States of America (the “United States”) have not been and will not be registered under the United States Securities Act of 1933 and, accordingly, the delivery of Common Shares to U.S. Shareholders without further action by Shaker may constitute a violation of the laws of the United States;
- 4.18 to the best information of Shaker, there are three registered U.S. Shareholders and one registered holder (the “Foreign Shareholder”) of Petroflow Shares resident in a foreign country other than the United States;
- 4.19 to the best information of Shaker, the U.S. Shareholders currently hold a total of 3,500 Petroflow Shares, representing 0.0176% of the total number of outstanding Petroflow Shares and the Foreign Shareholder currently holds 500 Petroflow Shares representing 0.0025% of the total number of outstanding Petroflow Shares;
- 4.20 the delivery of Common Shares to the U.S. Shareholders would require the filing of a registration statement and subject Shaker to continuous disclosure requirements which would be overly burdensome to Shaker;

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- 4.21 the closing price (the "Closing Price") of the Common Shares on April 9, 2003 (the last day the Common Shares traded before the announcement of the Bid) was \$1.00;
 - 4.22 based the Closing Price, the price of one Common Share for every 13.68 Petroflow Shares was determined to be equal to a cash price of \$0.073 per Petroflow Share;
 - 4.23 under the Bid each U.S. Shareholder or Foreign Shareholder, or holder of Petroflow Shares who appears to Shaker or to Valiant Trust Company (the "Depository") to be resident in a country other than Canada, may only receive cash for their Petroflow Shares unless the issuance of Common Shares is permitted under local securities laws in such foreign country without being registered or qualified for issuance;
 - 4.24 to the extent that U.S. Shareholders and the Foreign Shareholder, resident in jurisdictions in which the issuance of Common Shares in exchange for their Petroflow Shares is not permitted under local securities laws, elect to deposit their Petroflow Shares pursuant to the Bid, Shaker proposes to pay cash in the amount of \$0.073 (Cdn.) per Petroflow Share, less applicable withholding taxes, substantially simultaneously with the delivery to all other holders of Petroflow Shares of the consideration to which such shareholders are entitled under the Bid;
 - 4.25 if Shaker increases the consideration offered to holders of Petroflow Shares resident in Canada, the increase in consideration will also be offered to U.S. Shareholders and Foreign Shareholders at the same time and on the same basis; and
 - 4.26 Shaker will pay the cash directly to the Depository who will then distribute the cash to the U.S. Shareholders and the Foreign Shareholder resident in jurisdictions in which the issuance of Common Shares in exchange for their Petroflow Shares is not permitted;
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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6. AND WHEREAS 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;
7. THE DECISION of the Decision Makers under the Legislation is that, in connection with the Bid, Shaker is exempt from the Identical Consideration Requirement insofar as the U.S. Shareholders and Foreign Shareholders who would otherwise receive Common Shares under the Bid will receive cash proceeds as set out in paragraphs 4.24, 4.25, and 4.26.

DATED this 3rd day of June, 2003

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair