

2007 BCSECCOM 751

October 30, 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 Securities Act - Identical consideration - Issuer needs relief from the requirement in s. 107(1) of the *Securities Act* (British Columbia) that all holders of the same class of securities must be offered identical consideration (the Identical Consideration Requirement) - Under the bid, Canadian resident shareholders may receive shares, cash, or a combination of both; US resident shareholders and other shareholders not resident in Canada or the US will receive substantially the same value as Canadian shareholders, in the form of cash paid to the US and other foreign shareholders based on the proceeds from the sale of their shares; the number of shares held by US and other foreign residents is *de minimis*; the US does not have an identical consideration requirement

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(1), 114(2)

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

and

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

and

In the Matter of
Vaaldiam Resources Ltd.
(the Filer)

MRRS Decision Document

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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) for an exemption from the requirement under the Legislation to offer identical consideration (the Identical Consideration Requirement) to all the holders of the same class of securities that are subject to a take-over bid (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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

Defined terms herein 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 Filer is a company existing under the Canada Business Corporations Act;
2. the Filer's head office is located in Ontario;
3. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec and is not in default of any of the requirements of the Legislation;
4. the authorized capital of the Filer consists of an unlimited number of common shares (the Filer's Shares), of which, as of July 26, 2007, there were 83,201,204 Filer Shares outstanding;
5. the Filer's Shares are listed on the Toronto Stock Exchange (TSX);
6. on July 3, 2007 the Filer issued a press release announcing its intention to make an offer (the Offer) to acquire all of the outstanding common shares (GWD Shares) of Great Western Diamonds Corp. (GWD);
7. GWD is a company existing under the Canada Business Corporations Act;

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8. GWD's head office is located in Saskatchewan;
9. GWD is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;
10. the authorized capital of GWD consists of an unlimited number of GWD Shares and an unlimited number of Class A preferred shares;
11. the GWD Shares are listed on the TSX Venture Exchange;
12. to the knowledge of the Filer, after reasonable inquiry, as of July 26, 2007, there are 88,887,299 GWD Shares outstanding (and no Class A preferred shares), of which 243,977 (approximately 0.2%) were held by 11 U.S. residents (GWD US Shareholders) and of which 1,455,740 (approximately 1.6%) were held by 8 persons not resident in the United States or Canada (GWD Foreign Shareholders);
13. under the terms of the Offer, each holder of a GWD Share will receive consideration per GWD Share of 0.45 of a Filer Share, subject to adjustment as described in the Offer;
14. the Filer's Shares issuable under the Offer will not be registered or otherwise qualified for distribution under the securities legislation of the United States or any other foreign jurisdiction; the delivery of the Filer's Shares to GWD US Shareholders, without further action by the Filer, could constitute a violation of the laws of the United States and the applicable foreign jurisdictions;
15. the Filer proposes to deliver to the depositary under the Offer (the Depositary) the Filer's Shares which GWD US Shareholders would otherwise be entitled to receive under the Offer, the Depositary will sell those Filer's Shares by private sale or on any stock exchange on which the Filer's Shares are then listed after the payment date for the GWD Shares tendered by the GWD US Shareholders under the Offer, as soon as possible after completion of the sale, the Depositary will distribute the aggregate net proceeds of the sale, after expenses and applicable withholding taxes, pro rata among the GWD US Shareholders that tendered their GWD Shares under the Offer;
16. in the absence of the mechanism described in paragraph 15, the offer, sale and delivery of Vaaldiam Shares to the GWD US Shareholders would constitute a violation of certain U.S. securities laws. Registration under such U.S. securities laws of the Vaaldiam Shares deliverable to GWD US Shareholders pursuant to the Offer would be extremely costly and burdensome to the Filer. Further, the Multijurisdictional Disclosure System would not provide relief

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from the registration or qualification requirements of such U.S. securities laws;

17. to the extent that any of the GWD Foreign Shareholders are in jurisdictions which do not permit the Vaaldiam Shares to be delivered without registration or qualification under the laws of their own jurisdiction, the Filer may utilize a mechanism similar to the one described in paragraph 15 above, modified as necessary to comply with the laws of such foreign jurisdiction;
18. any sale of the Filer's Shares described in paragraph 15 above will be completed as soon as possible after the date on which the Filer takes up the GWD Shares tendered by the GWD US Shareholders or GWD Foreign Shareholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable GWD US Shareholders or GWD Foreign Shareholder and minimize any adverse impact of the sale on the market for the Filer's Shares;
19. the takeover bid circular to be prepared by the Filer and sent to all shareholders of GWD will disclose the procedure described in paragraph 15 to be followed for GWD US Shareholders and GWD Foreign Shareholders who tender their GWD Shares to the Offer; and
20. except to the extent that relief from the Identical Consideration Requirement is granted, the Offer will comply with the requirements under the Legislation concerning take-over bids.

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, in connection with the Offer, the Requested Relief is granted so that the Filer is exempt from the Identical Consideration Requirement insofar as GWD US Shareholders and GWD Foreign Shareholders, who would otherwise receive Filer's Shares pursuant to the Offer, receive cost proceeds from the sale of the Filer's Shares in accordance with the procedures set out in paragraphs 15 and 17 above.

Carol S. Perry
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission