

# 2007 BCSECCOM 137

## Headnote

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 foreign 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.

## Exemption Order

### Mineral Securities Inc. (MSX)

#### Section 114(2)(c) of the *Securities Act*, R.S.B.C. 1996, c. 418

## Background

- ¶ 1 MSX applied for an exemption from the take over bid requirements in sections 105 to 110 of the Act (the Take Over Bid Requirements) in connection with an offer to be made by Newco (as defined below) to acquire from Haywood Securities Inc. (Haywood) certain options to acquire ordinary shares of MSX.

## Representations

- ¶ 2 MSX represents that:
1. it is a company incorporated in Australia under *Corporations Act 2001* (Cth) (the ACA);
  2. its ordinary shares are quoted on the Australian Stock Exchange (ASX);
  3. as of February 12, 2007, it has:
    - (a) 66,982,488 fully paid ordinary shares (the MSX Shares) on issue;
    - (b) 10,446,476 publicly listed options (the Listed Options) to acquire 10,446,476 MSX Shares at an exercise price of \$1.15 per MSX Share until January 31, 2008;
    - (c) 1,300,000 non-listed options to acquire 1,300,000 MSX Shares at an exercise price of \$1.25 per MSX Share until January 31, 2009; and

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- (d) 925,000 non-listed options (the Haywood Options), held by Haywood, to acquire 925,000 MSX Shares at an exercise price of \$1.30 per MSX Share until September 30, 2007;
4. Minsec (BVI) Limited (Newco) is a company incorporated in the British Virgin Islands (BVI) for the specific purpose of implementing a scheme of arrangement to be conducted in accordance with Part 5.1 of the ACA (the Top Hat Scheme);
  5. before implementing the Top Hat Scheme, Newco's issued capital will consist of one share (the Newco Share), which is intended to be held by a purpose trust operated by MSX's BVI lawyers;
  6. it and Newco are not reporting issuers in British Columbia or any other jurisdiction of Canada and do not intend to become reporting issuers in those jurisdictions;
  7. MSX proposes to re-domicile to the BVI by incorporating Newco and by proposing to its securityholders the Top Hat Scheme;
  8. under the Top Hat Scheme, Newco will acquire all of the issued MSX Shares and Listed Options of MSX (through a new wholly owned subsidiary being an Australian incorporated special purpose vehicle (the SPV2)) in exchange for Newco Shares and options of Newco (the Newco Options) on a one for one basis, respectively; as a result of the Top Hat Scheme, MSX will become an indirect wholly owned subsidiary of Newco and all of MSX's existing securityholders (excluding holders of the non-listed options) will become securityholders in Newco in proportions that reflect their current interests in MSX;
  9. the Top Hat Scheme will be conditional on requisite securityholder approval in accordance with the ACA, Australian Court approval and approval for the official quotation of the Newco Shares and Newco Options on ASX (which will trade on ASX in the form of depository receipts);
  10. in order to implement the Top Hat Scheme, MSX will prepare a scheme booklet (Scheme Booklet) that will explain the proposed Top Hat Scheme;
  11. to its knowledge, Haywood is a registered dealer under the Act, an accredited investor as defined under National Instrument 45-106 – Prospectus and Registration Exemptions and is resident in British Columbia;

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12. as of February 12, 2007, the number of MSX Shares issuable to Haywood under the Haywood Options would constitute less than 1.5% of the current issued MSX Shares (assuming that no other options are exercised), and on a fully diluted basis, approximately 1.2% of the issued MSX Shares;
13. in connection with the Top Hat Scheme, Newco proposes to enter into a separate conditional option transfer agreement (Option Transfer Agreement) with Haywood that, in the event the Top Hat Scheme is implemented, would provide that Newco would acquire the Haywood Options in return for certain Newco options (the Newco Replacement Options) on identical terms to the existing Haywood Options currently held by Haywood (the Haywood Offer);
14. under the Option Transfer Agreement and the transfer of the Haywood Option, Newco would have the right to acquire the underlying MSX Shares in accordance with the terms of the Haywood Options, which collectively with the MSX Shares acquired under the Top Hat Scheme would result in Newco holding in excess of 20% of the issued and outstanding MSX Shares;
15. the Haywood Options will be treated in a similar manner to the MSX Shares under the Top Hat Scheme;
16. the Top Hat Scheme and Haywood Offer will be made in compliance with applicable corporate and federal securities laws of Australia;
17. the Scheme Booklet will be provided to Haywood at the same time that the Scheme Booklet is provided to shareholders of MSX;
18. the Haywood Offer will only proceed if Haywood agrees to the Option Transfer Agreement and Haywood does not object to MSX's request for relief from the Take Over Bid Requirements;
19. the Haywood Offer constitutes a take over bid under the Act and therefore must either comply with or be exempt from the Take Over Bid Requirements;
20. Newco cannot rely on the de minimis exemption from the Take Over Bid Requirements because Australia is not a recognized jurisdiction for the purpose of that exemption.

### **Order**

- ¶ 3 Because it considers that to do so would not be prejudicial to the public interest, the Commission orders, under section 114(2)(c) of the Act, that Newco is exempt from the Take Over Bid Requirements in connection with the Haywood Offer, provided that:

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- (a) the Haywood Offer is made in compliance with applicable corporate and federal securities laws of Australia; and
- (b) the Scheme Booklet is provided to Haywood at the same time that the Scheme Booklet is provided to shareholders of MSX.

¶ 4 March 15, 2007

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission