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Headnote

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 under a U.S exemption; the bid will satisfy all other conditions required for an exempt take over bid

Exemption Order

OCM/GFI Power Opportunities Fund, L.P

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

Background

- ¶ 1 OCM/GFI Power Opportunities Fund, L.P (Fund) has applied on behalf of SPL Acquisition S.a.r.l. (SPL Acquisition Sub, and together with the Fund, the Purchasers) under subsection 114(2) of the Act for an order that the take over bid requirements of the Act, the Take Over Bid Requirements not apply to the cash offer made by SPL Acquisition Sub for all of the issued shares and outstanding options of SPL Worldgroup B.V. (SPL), other than certain securities held by Management Holders (defined below) (the Offer);

Representations

- ¶ 2 The Fund represents that:
1. the Fund intends to acquire the securities of SPL in a two-step process; the transaction will be governed by a Share Tender and Exchange Agreement between SPL, the Fund and Leonard Sidney Israelstam as a representative for the Selling Shareholders (Israelstam);
 2. the acquisition of the SPL securities will be by way of an all cash general offer in which SPL Acquisition Sub acquires the SPL securities;
 3. SPL Acquisition Sub is a Luxembourg private limited company, formed for the purpose of making a tender offer for the Securities of SPL; SPL Acquisition Sub is currently a wholly owned subsidiary of the Fund;
 4. SPL is an enterprise software provider with subsidiaries in a number of countries, including Australia, Brazil, France, Germany, Hong Kong, Israel, Italy, New Zealand, the Philippines, South Africa, the United States and the United Kingdom; SPL is not listed on any exchange in any country;
 5. SPL shares are not registered with the Securities and Exchange Commission (SEC) in the United States under the U.S. Securities Exchange Act of 1934

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(Exchange Act) and SPL is exempt from the reporting requirements of the Exchange Act;

6. the Fund is a limited partnership organized under the laws of the State of Delaware, managed by GFI Energy Ventures, LLC, a California limited liability company; the Fund invests primarily in companies in the energy industry;
7. neither SPL Acquisition Sub, the Fund nor SPL is a reporting issuer under the laws of any jurisdiction in Canada and none have any intention of becoming a reporting issuer;
8. the authorized share capital of SPL consists of 4,480,080 shares of Series A common stock, 0.12 Netherland Guilder (NLG) par value per share, (Series A Common Shares); 52,302,300 shares of Series B common stock, 0.12 NLG par value per share, (Series B Common Shares); 4,000,000 shares of Series C common stock, 0.12 NLG par value per share, (Series C Common Shares; collectively, with Series A Common Shares and Series B Common Shares, Common Shares); 1,120,020 shares of Series A preferred stock, 0.12 NLG par value per share, (Series A Preferred Shares); 597,600 shares of Series B preferred stock, 0.12 NLG par value per share, (Series B Preferred Shares; collectively with Series A Preferred Shares and Common Shares, SPL Shares) and all outstanding vested and unvested options to purchase shares of SPL Shares (SPL Options), other than certain shares of SPL Shares and SPL Options;
9. as at October 15, 2004, no Series A Shares, 11,749,252 Series B Shares, no Series C Shares, 1,120,020 Series A Preferred Shares, 597,600 Series B Preferred Shares were issued and outstanding; as of October 15, 2004, there were 6,057,138 outstanding warrants of SPL Options, of which 4,266,443 were exercisable, and which, if exercised, will result in the issue of an additional Common Shares;
10. according to the register of shareholders, as of October 29, 2004, there were 158 SPL shareholders and 560 SPL Option holders (of which 15 were also shareholders); of these, one resident of British Columbia was the registered holder of 68,204 (0.3%) Common Shares and one resident of British Columbia was the registered holder of 2000 (0.01%) SPL Options, of which 1,866 were vested;
11. on October 15, 2004, the Fund, SPL and Israelstam entered into a Share Tender and Exchange Agreement (Share Tender and Exchange Agreement) which sets out the terms of the Offer, including the terms under which SPL

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Acquisition Sub will cancel all of the SPL Options acquired by it under the Offer for additional Series B Common Shares (Exchange);

12. certain major insiders of SPL Shares have signed Agreements to Tender, locking up their SPL Shares;
13. in addition, in connection with the Offer and the Exchange, SPL, the Fund, and shareholders of Synergen, Inc. (Synergen), a Delaware corporation wholly-owned by the Fund will enter into a Securities Purchase and Exchange Agreement whereby Synergen will be combined under common ownership with SPL in a series of transactions (some of which will take place at the closing of the Offer);
14. since the SPL securities are not registered under section 12 of the Exchange Act, the offer is exempt from certain requirements of the Exchange Act, although it is subject to subsection 14(e), the antifraud provision relating to tender offers;
15. the Offer is being extended to all holders (other than the Offeror and the parties acting in concert with it) of SPL Shares and SPL Options;
16. the Offer will remain open for acceptance for at least 31 days following the date on which the offer statement containing details of the Offer and the related acceptance and transfer form (Offer Statement) is first mailed;
17. the Purchasers mailed the Offer Statement to the holders of SPL Shares and SPL Options on November 2, 2004 and the Offer will remain open until at least December 3, 2004;
18. the Offer will be made on the same terms and conditions to the holders of SPL Shares and SPL Options resident in British Columbia as those applicable to holders of SPL Shares and SPL Options residing outside Canada;
19. the Offer Statement and all other material relating to the Offer, including any amendments, sent by or on behalf of the Purchasers to holders of SPL Shares and SPL Options residing outside Canada will concurrently be sent to the holders of SPL Shares resident in Canada and filed with the British Columbia Securities Commission;
20. SPL Acquisition Sub cannot rely on the *de minimis* exemption from the take over bid requirements because the Commission recognizes bids that comply with, and are not exempt from, the requirements of the Exchange Act for this purpose.

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Order

- ¶ 3 Because it is not prejudicial to the public interest, the Commission orders under subsection 114(2) of the Act that the Purchasers are exempt from the Take Over Bid Requirements in connection with the Offer, provided that the Offer Statement and all other materials relating to the Offer, including any amendments, that are sent by or on behalf of the Purchasers to securityholders of SPL residing outside Canada are concurrently sent to securityholders of SPL resident in Canada and copies of the material are filed concurrently with the Commission.
- ¶ 4 November 26, 2004.

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