

## **2003 BCSECCOM 547**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the registration, prospectus and take over bid requirements to permit an offer made in compliance with laws of Germany to be made in BC - offeror unable to determine the number of BC holders or percentage of securities held by BC holders - number of BC holders and percentage of securities held believed to be *de minimis*

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110 and 114(2)(c)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD  
ISLAND AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF BUZZI UNICEM S.p.A.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island (the “Jurisdictions”) has received an application from Buzzi Unicem S.p.A. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements in the Legislation do not apply to trades made in connection with the proposed offer (the “Offer”) by the Applicant for the outstanding preferred shares (“Preferred Shares”) of Dyckerhoff AG (the “Target”): (i) the formal take-over bid requirements, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-

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over Bid Requirements”), (ii) the dealer registration requirements (the “Registration Requirements”), and (iii) the prospectus requirements (the “Prospectus Requirements”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”), the Ontario Securities Commission (the “Commission”) is selected as the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms have the meaning set out in National Instrument 14-101 or in Québec Commission Notice 14-101;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation incorporated under the laws of Italy. The Applicant’s shares are listed for trading on the Milan Stock Exchange. The Applicant is a recognized leader in the production and distribution of cement, ready-mixed concrete and aggregate products.
2. The Applicant’s registered office is located at Via Luigi Buzzi, 6, 15033 Casale Monferrato, Italy.
3. The Applicant is not a reporting issuer or the equivalent in any of the Jurisdictions. The Applicant’s securities are not listed or quoted for trading on any Canadian stock exchange or market.
4. The Target is a corporation incorporated under the laws of the Federal Republic of Germany, with its shares listed on the Frankfurt (Main) Stock Exchange, the Düsseldorf Stock Exchange and the Luxembourg Stock Exchange. The Target is a leading cement company selling its products in eight countries.
5. The Target’s registered office is located in Wiesbaden, Germany.
6. The Target’s issued and outstanding share capital consists of 20,667,554 ordinary shares (“Ordinary Shares”) and 20,597,999 Preferred Shares. The Preferred Shares constitute “equity shares” for the purposes of the definition of “take-over bid” in the applicable securities legislation in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador as they carry a residual right to participate in the earnings of the Target and, upon liquidation or winding up of the Target, in its assets.

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7. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target's securities are not listed or quoted for trading on any Canadian stock exchange or market.
8. The Applicant currently holds 49.29% of the outstanding Ordinary Shares and has rights to purchase 41.13% of the outstanding Ordinary Shares. The Applicant also holds 4.98% of the Preferred Shares and has a right to purchase 1.77% of the outstanding Preferred Shares.
9. On June 5, 2003, the Applicant announced its intention to launch a stock swap tender offer whereby holders of Preferred Shares of the Target would be invited to tender their Preferred Shares of the Target in exchange for savings shares ("Savings Shares") of the Applicant at a ratio of 2.4 Saving Shares of the Applicant for every Preferred Share of the Target tendered.
10. The Offer is being made, and the offer document (the "Offer Document") reflecting the terms of the Offer is being prepared, in accordance with the laws of the Federal Republic of Germany and, in particular, in compliance with the German Securities Acquisition and Takeover Act.
11. The Offer Document, which includes as an annex a prospectus prepared in accordance with German law regarding the Savings Shares of the Applicant, will be submitted to the applicable securities regulatory authority in Germany by July 31, 2003 for review. It is expected that the Offer Document, including the prospectus, will be made available to the holders of the Target's Preferred Shares after approval by the German regulator, on or about August 20, 2003. In accordance with German law, the Offer Document, including the prospectus, will be available on the internet under <http://buzziunicem-dyckerhoff.com> and a public announcement in a national German newspaper will specify where and how the shareholders may obtain a copy of the Offer Document free of charge.
12. As permitted by German law, the Target has issued bearer securities and does not maintain a share register. Accordingly, any information about the Target's shareholdings in Canada can only be determined on a limited enquiry basis by the Target. Based on such enquiry by the Target, the Applicant believes that as of July 2, 2003 there were six holders of Preferred Shares resident in Canada, holding 3,109 Preferred Shares of the Target representing approximately 0.02% of the 20,597,999 Preferred Shares outstanding. The Applicant believes that one of the shareholders resides in Ontario. The Applicant has been unable to determine the Province in which the remaining five shareholders reside.

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13. Any material relating to the Offer that is to be sent by the Applicant to holders of the Target's Preferred Shares in Germany will also be sent to holders of such shares residing in the Jurisdictions, along with an English translation for convenience purposes, and will be concurrently filed with the Decision Makers. A public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of the Offer Document or an English convenience translation free of charge.
14. The *de minimis* take-over bid exemptions found in certain of the Jurisdictions are not available to the Target since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemptions. Also, because the Target does not maintain a share register, the Applicant is unable to determine conclusively the number of holders of the Target's Preferred Shares resident in each of the Jurisdictions, or the number of Preferred Shares held by any such persons.
15. All of the holders of the Target's Preferred Shares to whom the Offer is made will be treated equally.
16. An exemption from the Registration Requirements is not available in certain of the Jurisdictions for trades made in connection with the Offer.
17. An exemption from the Prospectus Requirements is not available in certain of the Jurisdictions for trades made in connection with the Offer.
18. If the requested relief is not granted, holders of the Target's Preferred Shares resident in the Jurisdictions will not have the opportunity to participate in the Offer.

AND WHEREAS under the MRRS, this Decision Document evidences the decision of each of the Decision Makers (the "Decision");

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;

THE DECISION of the Decision Makers under the Legislation is that:

- (a) the Applicant is exempt from the Take-over Bid Requirements in making the Offer to the shareholders of the Target who are resident in the Jurisdictions provided that:

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- (i) the Offer and all amendments to the Offer are made in compliance with the laws of Germany,
  - (ii) any material relating to the Offer that is sent to the holders of the Target's Preferred Shares in Germany will be sent to the holders of the Target's Preferred Shares resident in the Jurisdictions as well as an English convenience translation, and copies thereof filed with the Decision Maker in each Jurisdiction; and
  - (iii) a public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of the Offer Document or an English convenience translation free of charge;
- (b) the Registration Requirements shall not apply to trades made in connection with the Offer; and
- (c) the Prospectus Requirements shall not apply to trades made in connection with the Offer provided that the first trade in Savings Shares issued by the Applicant in connection with the Offer shall be a distribution or a primary distribution to the public unless, in all Jurisdictions other than Québec, the conditions of subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied, and, in Québec, the alienation of Saving Shares issued by the Applicant in connection with the Offer are executed through the facilities of an exchange or market outside of Canada.

Dated this 29<sup>th</sup> day of July, 2003.

Paul M. Moore  
H. Lorne Morphy