

2006 BCSECCOM 541

August 28, 2006

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 Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
Ontario, Alberta and British Columbia
(the “Jurisdictions”)

and

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

and

In the Matter of
OCMES Acquisition Corp.
(the “Offeror” and “Filer”)
and Semco Technologies Inc. (“Semco”)

MRRS Decision Document

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 pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with an offer dated July 28, 2006 (the “Offer”) by the Offeror to acquire 51% of the issued and outstanding common shares of Semco (“Common Shares”), the Continuing Arrangements (as defined below) entered into between Semco and each of Ronald F. O’Hearn and Barbara Love (the “Officers”) have

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been entered into for reasons other than to increase the value of the consideration paid to the Officers for their securities of Semco and may be entered into despite the provision in the Legislation that prohibits an offeror who makes or intends to make a take-over bid and any person acting jointly or in concert with the offeror from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (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 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 Offeror is a corporation incorporated under the *Business Corporations Act* (Ontario) for the purpose of making the Offer. Its registered office located in Toronto, Ontario.
2. The shareholders of the Offeror are Philip Jamieson, who is also the President and sole director of the Offeror, Tricaster Holdings Inc. (“Tricaster”) and Combined Telecom Inc. (“Combined Telecom”). Tricaster and Combined Telecom are corporations controlled by David Campbell.
3. None of the Offeror, Tricaster or Combined Telecom is a reporting issuer in any jurisdiction in Canada.
4. The relationship between the Offeror, its officers, directors and shareholders, and Semco and its officers and directors and shareholders, is an arm’s length relationship.
5. Semco is a corporation existing under the *Business Corporations Act* (Alberta) (the “ABCA”). Semco is in the business of the design and manufacturing of

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bulk handling systems for the food, petrochemical and mining industries, including customer relationships.

6. The authorized capital of Semco consists of an unlimited number of Common Shares and an unlimited number of first preferred shares issuable in series and an unlimited number of second preferred shares issuable in series. As of July 27, 2006 there are 12,500,000 Common Shares and nil first preferred shares or second preferred shares issued and outstanding. The Common Shares are listed on the TSX Venture Exchange ("TSXV") under the symbol "STT".
7. Semco is a reporting issuer in each of the Jurisdictions. It is not a reporting issuer or the equivalent in any other jurisdiction in Canada.
8. Pursuant to the Offer and the take-over bid circular (the "Take-over Bid Circular") dated July 28, 2006, the Offeror proposes to acquire 51% of the issued and outstanding Common Shares.
9. The Offer was mailed to registered shareholders of Semco on July 28, 2006.
10. The Offer is made on the basis of \$0.17 in cash in respect of each Common Share held by the holders of Common Shares (the "Shareholders"). The Offer is subject to conditions that are customary for transactions of this nature, including that all regulatory approvals be obtained and there be validly deposited under the Offer and not withdrawn at the expiry time of the Offer 51% of Common Shares then outstanding.
11. On July 19, 2006, the Offeror and certain Shareholders, including the Officers, (collectively, the "Locked-Up Parties") entered into an agreement (the "Lock-Up Agreement") pursuant to which the Locked-Up Parties agreed to deposit pursuant to the Offer and not withdraw (except under certain conditions provided for in the Lock-Up Agreement) the greater of:
 - (i) 51% of the Common Shares held by the Locked-Up Parties, and
 - (ii) that number of Common Shares equal to 51% of the outstanding Common Shares less the number of Common Shares tendered to the Offer by Shareholders other than the Locked-Up Parties.
12. Ronald F. O'Hearn ("O'Hearn") is the President, Chief Executive Officer, Chairman and a director of Semco. O'Hearn directly or indirectly holds, or exercises control or direction over, 5,317,096 Common Shares, representing approximately 42.54% of the issued and outstanding Common Shares (on a

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fully-diluted basis). O'Hearn does not currently hold any other securities of Semco.

13. Barbara Love ("Love") is the Chief Financial Officer and a director of Semco. Love directly or indirectly holds, or exercises control or direction over, 2,563,077 Common Shares, representing approximately 20.50% of the issued and outstanding Common Shares (on a fully-diluted basis). Love does not currently hold any other securities of Semco.
14. Semco currently has no written employment agreements with the Officers. However, each of the Officers is employed based upon a verbal agreement (the "Verbal Agreements") that provides for, among other things, salary and non-competition and non-solicitation provisions. The terms and conditions of these provisions, while not formalized, are generally typical of arrangements with similarly situated senior officers of companies with comparable businesses to Semco.
15. The Verbal Agreements with the Officers is for an indefinite term. There are no termination provisions other than pursuant to provincial employment law.
16. The Verbal Agreements implicitly include non-competition and non-solicitation provisions. However, it is understood that the enforceability of such provisions is uncertain.
17. The annual salaries currently paid under the Verbal Agreements to O'Hearn and Love are \$140,000 each, in addition to benefits. There are currently no Semco incentive stock options granted to the Officers under the Semco stock option plan.
18. The Offeror has verbally committed not to cause Semco to terminate the Officers upon completion of a successful Offer and accordingly Semco will continue to employ the Officers upon the current terms of their employment, (the "Continuing Arrangements").
19. The Officers have built the business of Semco based in large part upon their experience in the business of the design and manufacture of bulk handling systems for the food, petrochemical and mining industries, including customer relationships. In order to maintain continuity of management and retain the employee work force, it is essential to the Offeror that the Officers be motivated to stay on following the successful completion of the Offer to facilitate the continued growth of the business of Semco.

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20. The commitment of the Offeror to the Continuing Arrangements is premised, in part, upon recognition of the fact that the successful completion of the Offer could constitute the basis of a claim of constructive dismissal which could entitle the Officers to severance payments. In this respect, the Continuing Arrangements are preventative and provide certainty that there is no basis for constructive dismissal.
21. The Continuing Arrangements may be embodied in written agreements which may include non-competition and non-solicitation covenants which extend beyond the implicit common law non-competition covenant under the Verbal Agreements.
22. The Continuing Arrangements are on terms and conditions that are commercially reasonable.
23. Disclosure of the Continuing Arrangements is included in the Take-over Bid Circular.
24. The Continuing Arrangements are proposed for valid business reasons unrelated to the Officers' holdings of Semco securities. The Continuing Arrangements are not for the purpose of conferring an economic or collateral benefit on the Officers, in their capacity as security holders, that other security holders of Semco do not enjoy.
25. The commitment of the Offeror to the Continuing Arrangements for each of the Officers is not conditional upon the Officers' support of the Offer.
26. The Continuing Arrangements have been negotiated between the Filer and each of Semco and the Officers on an arm's length basis.

Decision

Each of the relevant 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 the Requested Relief is granted.

Carol S. Perry
Ontario Securities Commission

Wendell S. Wigle
Ontario Securities Commission