

2007 BCSECCOM 690

November 2, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 114(2)(c) – Issuer bid requirements - General - An issuer wants to complete an issuer bid that meets some, but not all, of the conditions of the exemption set out in s. 99(h) of the Act (*de minimis* exemption) - Issuer bid satisfies all conditions of the *de minimis* exemption except that the issuer's bid will not be made in strict compliance with the laws of a recognized jurisdiction (the United States); the recognized jurisdiction permits or does not object to the bid not strictly complying with the laws of that jurisdiction; the variation does not prejudice BC shareholders; there are a *de minimis* number of BC shareholders holding less than 1% of the outstanding shares

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105 to 110, 114(2)(c)

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Manitoba, New Brunswick,
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
Velcro Industries N.V.
(the “Filer”)

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 under the securities legislation of the Jurisdictions (the Legislation) that the formal issuer bid requirements contained in the Legislation, including the provisions relating to the delivery of an offer and issuer bid circular and any notices of

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change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, financing, restrictions upon acquisition of securities, identical consideration and collateral benefits (collectively, the Issuer Bid Requirements), shall not apply to the Filer in connection with its offer to acquire for cash all outstanding shares of its common stock (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS),

- (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 Filer is incorporated and domiciled in Curacao, Netherlands Antilles as a public limited liability company.
2. The Filer's issued share capital as at August 31, 2007 consisted of 30,798,441 shares of common stock, of which 757,951 are shares of treasury stock, resulting in 30,040,490 shares outstanding (the Shares, and each a Share) as of that date.
3. The Shares are traded on the NASDAQ Capital Market (Nasdaq) under the symbol "VELC".
4. The Filer is a reporting issuer in the province of Quebec because its shares once traded on the Montréal Exchange. It is not a reporting issuer under the securities legislation of any other province or territory in Canada and none of its securities are listed for trading on any Canadian stock exchange. The Filer is not in default of its continuous disclosure obligations under the securities legislation of Quebec.
5. Cohere Limited is a British Virgin Islands corporation which owns approximately 88% of the Shares. The remaining Shares are held by

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approximately 1600 shareholders (not including objecting beneficial owners), of which approximately 80% are United States resident record holders.

6. According to the list of registered shareholders, as at August 31, 2007 there were 268 registered shareholders in Canada, holding a total of 179,536 Shares, representing approximately 0.60% of the outstanding Shares and, of these registered shareholders, there were 212 registered shareholders in Ontario holding approximately 0.52% of the outstanding Shares. In each of the remaining Jurisdictions there were fewer than 50 registered shareholders.
7. According to the analysis of beneficial shareholders obtained by the Filer, as at September 11, 2007 there are 53 beneficial holders in Canada, holding a total of 80,186 Shares, representing approximately 0.27% of the outstanding Shares, with less than 50 holders in each province.
8. The Filer is a foreign private issuer for purposes of the United States Securities Exchange Act of 1934 (the Exchange Act). The Shares have never been registered under Section 12 of the Exchange Act, as they were exempt from registration until July 31, 2006 pursuant to Exchange Act Rule 12g3-2(b) and are currently exempt from registration pursuant to an order of the United States Securities and Exchange Commission (the SEC) dated July 31, 2006 (Release No. 34-54241) (the Exemption) issued in connection with the registration of Nasdaq as a national securities exchange.
9. The Filer is not subject to Section 15(d) of the Exchange Act as it has never filed with the SEC a registration statement under the United States Securities Act of 1933. The Filer has never filed a listing application with Nasdaq, and has never registered the Shares under Section 12(b) of the Exchange Act. The Filer is one of only nine foreign private issuers identified by Nasdaq in its application for the Exemption that were trading on Nasdaq in reliance on exemptions from registration under section 12(g) of the Exchange Act pursuant to Rule 12g3-2(b). To the Filer's knowledge, it was one of only thirteen persons (including eight other foreign private issuers and four insurance companies) covered by the Exemption.
10. The Filer is not an "issuer" within the meaning of Exchange Act Rule 13e-4, because: (i) it does not have a class of equity securities registered pursuant to Section 12 of the Exchange Act; (ii) it is not a closed-end investment company registered under the Investment Company Act of 1940; and (iii) is not required to file periodic reports pursuant to Section 15(d) of the Exchange Act. As a result, the Filer is not subject to Exchange Act Rules 13e-4 and 13e-3, which contain procedural and disclosure requirements of the Exchange Act with respect to issuer tender offers and going private transactions, respectively.

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11. The Exemption expires on August 1, 2009, by which time the Filer will be required to register the Shares under the Exchange Act unless the number of United States resident shareholders of the Filer as of September 30, 2008 is less than 300. Due to the significant additional costs associated with registering the Shares under the Exchange Act, the Filer wishes to reduce the number of U.S. resident holders of Shares to below 300.
12. By an offer to purchase (the Offer) dated October 1, 2007 sent to each shareholder, the Filer is offering to acquire the Shares at a purchase price of US\$21.00 per Share, net to the seller in cash, without interest. The Offer is for any and all outstanding Shares without any condition of minimum tender; however it is a term of the Offer that the Filer will only accept for purchase Shares tendered by a shareholder if such shareholder tenders all of the Shares held by such shareholder, provided that the Filer will accept for purchase Shares registered in the name of a nominee and tendered by such nominee on behalf of a beneficial holder where all of the beneficial holder's Shares held by such nominee are tendered.
13. The Filer's board of directors has approved the Offer. The board is not making any recommendation as to whether or not shareholders should tender their Shares or refrain from tendering their Shares.
14. The Offer became effective on October 1, 2007 and is scheduled to expire on November 5, 2007, unless extended by the Filer.
15. All holders of the Shares will be treated equally and, if the Requested Relief is granted, the holders of the Shares resident in Canada will be entitled to participate in the Offer on the same terms and conditions as those extended to holders of Shares resident in other jurisdictions.
16. All materials relating to the Offer that have been sent by the Filer to holders of Shares resident in the United States have been concurrently sent to all Canadian holders.
17. An advertisement summarizing the terms of the Offer was published in the national (U.S.) edition of the *Wall Street Journal* on October 1, 2007.
18. Cohere Limited has advised the Filer that it will not tender any Shares pursuant to the Offer.
19. Following completion of the Offer, if the percentage of Shares held by Cohere Limited increases to 90% or more of the outstanding Shares, the laws of the

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Netherlands Antilles and the Filer's articles of incorporation would allow Cohere Limited to institute a claim to compel the sale of Shares held by the remaining minority shareholders to Cohere Limited, possibly subject to a determination of the value of the Shares in the Netherlands Antilles courts.

20. The Filer is effecting the Offer in compliance with Regulation 14E of the Exchange Act, which applies to tender offers generally and contains rules against fraudulent activities in connection with tender offers. However, because of its unique status under the Exchange Act as described in paragraphs 8. to 10. above, the Filer is not subject to the provisions of the Exchange Act specifically applicable to issuer tender offers (i.e., Rule 13e-4), and to the extent the Filer is complying with such provisions it is doing so on a voluntary basis only.
21. The Offer constitutes an "issuer bid" as defined in the Legislation and is therefore subject to the Issuer Bid Requirements unless otherwise exempt from the Issuer Bid Requirements pursuant to: (i) specific provisions of the Legislation, or (ii) discretionary relief granted by the securities regulator or regulatory authority in each Jurisdiction.
22. Although each Jurisdiction, other than New Brunswick, has recognized the laws of the United States with respect to the *de minimis* exemption from the Issuer Bid Requirements where the bid complies with the requirements of the Exchange Act and the rules made thereunder governing issuer bids and is not exempt therefrom, the Filer cannot rely on this exemption in these Jurisdictions because most of the provisions of the Exchange Act governing issuer tender offers do not apply to the Filer and, to the extent the Filer is complying with such provisions, it is doing so on a voluntary basis only.
23. In New Brunswick, the Filer cannot rely on *de minimis* exemption from the Issuer Bid Requirements in the Legislation because the United States is not a jurisdiction recognized by the New Brunswick Securities Commission for the purposes of this exemption.
24. In Ontario, in addition to the circumstances described in paragraph 22., the Filer cannot rely on the *de minimis* exemption from the Issuer Bid Requirements in the Legislation because the number of registered shareholders with Ontario addresses is not less than 50.

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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

- (a) the Offer is made in compliance with those requirements of the Exchange Act and rules made thereunder governing issuer bids that apply to the Offer, and
- (b) any additional materials relating to the Offer and any amendments thereto that are sent by or on behalf of the Filer to registered shareholders resident in the United States are also concurrently sent to registered shareholders with addresses in the Jurisdictions and copies of such materials are filed with the Decision Makers.

James E.A. Turner
Commissioner
Ontario Securities Commission

Margot Howard
Commissioner
Ontario Securities Commission