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January 11, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act s. 114(2) Issuer Bids - Exemption from Issuer Bid Requirements - An issuer conducting an issuer bid under a modified Dutch auction procedure requires relief from the requirement to take up and pay for securities deposited on a pro rata basis and the associated disclosure requirement - Under the modified Dutch auction procedure, all shares deposited at prices above the clearing price will be returned to the shareholder instead of being taken up and paid for on a pro rata basis. Shareholders who tender above the clearing price are not prepared to sell at the clearing price and so they suffer no prejudice if their shares are not taken up and paid for. Returning their shares respects their intentions. Shareholders who are prepared to sell at the clearing price are treated equally as their shares are taken up pro rata

Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid. After the bid, there will be a market for the issuer's securities that is not materially less liquid than before the bid

Applicable British Columbia Provisions

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

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

Form 62-903F, Item 9

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, Newfoundland and Labrador and
New Brunswick (the Jurisdictions)

and

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

and

In the Matter of
Dundee Corporation (the Filer)

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MRRS Decision Document

Background

¶ 1 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, in connection with the proposed purchase by the Filer of a portion of its outstanding class A subordinate voting shares (Shares) by way of an issuer bid (the Offer), the Filer be exempt from the following:

- (a) the requirements in the Legislation to
 - (i) take up and pay for securities on a pro rata basis according to the number of securities deposited by each security holder, and
 - (ii) provide disclosure in the issuer bid circular (the Circular) of the proportionate take up and payment, and
 - (b) the requirement in the Legislation of each of the Jurisdictions, except Ontario and Quebec, to obtain a formal valuation of the Shares (the Valuation Requirement),
- (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

¶ 3 This decision is based on the following facts presented by the Filer:

1. the Filer was incorporated under the Ontario *Business Corporations Act* on November 2, 1984;

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2. the Filer is authorized to issue an unlimited number of Shares and an unlimited number of class B common shares (the Common Shares) of which 23,905,504 Shares and 1,048,416 Common Shares were outstanding on December 12, 2005;
3. the Filer is a reporting issuer in each of the Jurisdictions where the concept exists and its Shares trade on the Toronto Stock Exchange (the TSX);
4. the Filer is not in default of any requirement under the Legislation;
5. to the knowledge of the Filer, at December 12, 2005 the only security holders that held greater than 10% of the Shares were
 - (a) Jodamada Corporation, a private company owned by the adult children of Ned Goodman, which owns 2,983,503 Shares and 140,299 Common Shares, representing 12.5% of the outstanding Shares and a 13.2% voting interest in the Filer,
 - (b) AIC Limited, which, through managed accounts, holds 3,361,059 Shares representing 14.1% of the outstanding Shares and a 2.6% voting interest in the Filer, and
 - (c) Private Capital Management, LP which, through managed accounts, holds 4,526,800 Shares representing 18.9% of the outstanding Shares and a 3.5% voting interest in the Filer;
6. Mr. Ned Goodman, the Filer's President and Chief Executive Officer, owns
 - (a) 878,562 Common Shares, including 166,935 Common Shares under options, and
 - (b) 1,387,978 Shares, including 509,000 Shares under options,

representing 5.7% of the Shares and a 69.0% voting interest in the Filer, assuming the exercise of the options;
7. the Filer intends to acquire up to 2,500,000 Shares representing 10.46% of the outstanding Shares (the Specified Number);
8. the Filer has made the Offer under a modified dutch auction procedure as follows:
 - (a) the Filer has offered to purchase up to the Specified Number of Shares,

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- (b) the Filer will pay a price per Share (the Clearing Price) between a range of two prices specified in the Circular (the Price Range),
- (c) security holders wishing to tender to the Offer may
 - (i) specify the lowest price within the Price Range that they are willing to sell all or a portion of their Shares at (an Auction Tender), or
 - (ii) elect to tender their Shares at the Clearing Price determined in accordance with paragraph (d) below (a Purchase Price Tender),
- (d) the Clearing Price will be the lowest price that will enable the Filer to purchase up to the Specified Number of Shares, and will be determined based on the number of Shares deposited under Auction Tenders and Purchase Price Tenders, with each Purchase Price Tender being considered a tender at the lowest price in the Price Range for the purposes of determining the Clearing Price,
- (e) the Filer will take up all Shares tendered at or below the Clearing Price under an Auction Tender and all Shares tendered under a Purchase Price Tender and pay for them at the Clearing Price, calculated to the nearest whole Share so as to avoid the creation of fractional Shares, subject to proration as described in paragraph (h) below,
- (f) the Filer will return all Shares tendered at prices above the Clearing Price to the appropriate security holders,
- (g) the Filer will not determine the total amount that it will expend under the Offer until it determines the Clearing Price,
- (h) if more than the Specified Number of Shares are tendered for purchase at or below the Clearing Price the Filer will purchase the tendered Shares on a *pro rata* basis, except that the Filer will first accept for purchase, and will not pro rate, Shares properly deposited by any security holder who beneficially holds fewer than 100 Shares and who
 - (i) deposits all of the holder's Shares under either an Auction Tender at or below the Clearing Price or a Purchase Price Tender, and
 - (ii) checks the "Odd Lots" box in the Letter of Transmittal,

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- (i) all Shares tendered by security holders who specify a tender price that falls outside the Price Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by the Filer and will be returned to the tendering security holders,
 - (j) all Shares tendered by security holders who fail to specify any tender price for the tendered Shares and fail to indicate that they have tendered their Shares under a Purchase Price Tender will be deemed to have been tendered under a Purchase Price Tender, and
 - (k) tendering security holders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they wish to tender will be considered to have tendered all Shares held by the security holder;
9. the Offer is subject to a condition that not less than 2,000,000 Shares be validly deposited to the Offer and not withdrawn;
10. during the 12 months before December 15, 2005,
- (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties of the Filer and Shares that were not freely tradable,
 - (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000,
 - (c) there were at least 1,000 trades in Shares on the TSX, and
 - (d) the aggregate trading value based on the price of the trades referred to in clause (c) above was at least \$15,000,000;
11. the market value of the Shares on the TSX was at least \$75,000,000 for the month of November 2005;
12. before the expiry of the Offer, all information regarding the number of Shares tendered and the prices at which the Shares are tendered will be kept confidential until the Clearing Price has been determined;

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13. since the Offer will be for less than all the Shares, if the number of Shares tendered to the Offer at or below the Clearing Price exceeds the Specified Number of Shares, the Legislation would require the Filer to
 - (a) take up and pay for deposited Shares proportionately, according to the number of Shares deposited by each security holder, and
 - (b) disclose in the Circular that the Filer would, if Shares tendered to the Offer exceeded the Specified Number of Shares, take up the Shares proportionately according to the number of Shares tendered by each security holder to the Offer;
14. the Filer has determined it is reasonable to conclude that, following completion of the Offer, there will be a market for the beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that exists at the time the Offer is made and the Filer intends to rely upon the exemptions from the Valuation Requirement in sections 3.4(3) of Ontario Securities Commission Rule 61-501 and Québec Local Policy Statement Q-27 (the Presumption of Liquid Market Exemptions); and
15. the Circular will
 - (a) specify that the total number of Shares that the Filer intends to purchase under the Offer will be up to the Specified Number of Shares,
 - (b) disclose the mechanics for the take up of and payment for, or the return of, Shares as described in paragraph 8 above,
 - (c) explain that, by tendering the Shares at the lowest price in the Price Range or under a Purchase Price Tender, a security holder can reasonably expect that the Shares tendered will be purchased at the Clearing Price, subject to pro ration as described above,
 - (d) disclose the facts supporting the Filer's reliance on the Presumption of Liquid Market Exemptions as updated to the date of the announcement of the Offer, and
 - (e) contain the disclosure prescribed by Legislation for issuer bids, except to the extent exemptive relief is granted by this decision.

Decision

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- ¶ 4 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 the Requested Relief is granted provided that

- (a) Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to security holders, in the manner described in paragraph 8, and
- (b) the Filer can rely on the Presumption of Liquid Market Exemptions.

Martin Eady, CA
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British Columbia Securities Commission