

2005 BCSECCOM 585

August 29,2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer that is a wholly-owned subsidiary wants relief from filing some continuous disclosure documents - The issuer is an indirect, wholly owned subsidiary of a reporting issuer parent corporation; the issuer's obligations under the debt instruments it issued will be satisfied by the dividends it receives from a holding company; the holding company and all its other subsidiaries have guaranteed the issuer's obligations under the debt instruments; the parent's only operations are carried on through the holding company, as a result, the parent and the holding company are functionally equivalent to each other; the parent's continuous disclosure record will be filed and delivered in place of the issuer's disclosure record; the issuer will file material change reports for any change that is material to it but not the parent

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85(1), 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144 and 145

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 4.1, 4.3, 4.6, 5.1, 5.6, 6.1, 7.1, 8.2, 9.1, 11.1, 12.2, and 13.1

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

and

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

and

In the Matter of
Royster-Clark Ltd. and Royster-Clark ULC

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Royster-Clark Ltd. (RC Ltd.)

2005 BCSECCOM 585

and Royster-Clark ULC (RC ULC and, together with RC Ltd., the Filers) for a decision under the securities legislation of the Jurisdictions (the Legislation) that RC ULC be exempt from

1. except in the Northwest Territories, the requirements under the Legislation to:
 - (a) issue press releases and file reports regarding material changes (the Material Change Reporting Requirement);
 - (b) file annual financial statements together with an auditor's report and annual MD&A, as well as interim financial statements together with a notice regarding auditor review of a written review report, if required, and interim MD&A;
 - (c) send annually a request form to the registered holders and beneficial owners of RC ULC's securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of RC ULC's annual financial statements and annual MD&A, interim financial statements and interim MD&A, or both, and to send a copy of financial statements and MD&A to registered holders and beneficial owners;
 - (d) send a form of proxy and information circular with a notice of meeting to registered holders of voting securities and to file the information circular, form of proxy and all other material required to be sent in connection with the meeting to which the information circular or form of proxy relates;
 - (e) where applicable, file a business acquisition report including any required financial statement disclosure, if RC ULC completes a significant acquisition (the BAR Requirement);
 - (f) file a copy of any disclosure material that it sends to its security holders;
 - (g) file an annual information form; and
 - (h) where applicable, file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to RC ULC and was entered into in the last year, or before the last financial year but is still in effect (the Material Contracts Requirement),

(collectively, the Continuous Disclosure Requirements); and
2. except in British Columbia, the requirements under the Legislation to:

2005 BCSECCOM 585

- (a) file annual certificates (Annual Certificates) in accordance with section 2.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109); and
 - (b) file interim certificates (Interim Certificates) in accordance with section 3.1 of MI 52-109,
- (collectively, the Certification Requirements)

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

- (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 Filers:

1. RC Ltd. is a corporation formed under the laws of Ontario, with its head office located at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
2. RC Ltd. owns all of the Class A common shares of Royster-Clark Holdings, Inc. (RC Holdco), representing an approximately 91.1% economic interest.
3. RC ULC is an unlimited liability company organized under the laws of Nova Scotia, with its head office at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
4. RC ULC is a wholly-owned subsidiary of RC Holdco and owns all of the issued and outstanding preferred shares of RC Holdco (the Preferred Shares).
5. RC Holdco is a Delaware corporation, with its head offices located at 6 Executive Drive, Collinsville, Illinois; 1251 Avenue of the Americans, Suite 900, New York, NY; and 999 Waterside Drive, 8th Floor, Norfolk, Virginia.

2005 BCSECCOM 585

RC Holdco, through its subsidiaries, is one of the largest retail distributors of each of agricultural fertilizer, seed and crop protection products, and providers of agronomic services, such as product application and technical consulting services, to farmers in the United States. RC Holdco, through its subsidiaries, also distributes crop production inputs, principally fertilizer, on a wholesale level.

6. The Filers filed a preliminary prospectus dated June 14, 2005, an amended and restated preliminary prospectus dated June 21, 2005 and a (final) prospectus dated July 13, 2005 in connection with an initial public offering (the Offering) of income deposit securities (IDSs).
7. RC Ltd. issued the common shares that form part of the IDSs and will satisfy dividends declared on these common shares with the dividends it receives on the Class A common shares that it owns in RC Holdco.
8. RC ULC issued the subordinated notes (the Subordinated Notes) that form part of the IDSs and will satisfy its obligations under the Subordinated Notes with the dividends it receives on the Preferred Shares that it owns in RC Holdco.
9. Mutual Reliance Review System decision documents were issued for the Filers' (a) preliminary prospectus and the amended and restated preliminary prospectus on June 15, 2005 and June 22, 2005, respectively; and (b) (final) prospectus on July 14, 2005.
10. RC Ltd. and RC ULC became reporting issuers or the equivalent in each of the Jurisdictions where such status exists on July 14, 2005, and the Offering closed on July 22, 2005.
11. In connection with the Offering, the Filers filed an undertaking with the Ontario Securities Commission to provide investors with separate financial statements for any guarantor subsidiaries and any significant business interests where GAAP prohibits the consolidation of financial information of such entities and the Filers.
12. RC ULC's obligations under the Subordinated Notes represent its primary liability.
13. RC ULC will satisfy its obligations under the Subordinated Notes through the dividends that it will receive on the Preferred Shares and it is not currently anticipated that RC ULC will have any other meaningful assets or sources of income.

2005 BCSECCOM 585

14. RC ULC's obligations under the Subordinated Notes are fully and unconditionally guaranteed by RC Holdco and each of its subsidiaries other than RC ULC (the Guarantors).
15. In order to understand and assess the ability of RC ULC (and the Guarantors) to satisfy the obligations under the Subordinated Notes, a holder of the Subordinated Notes will need to determine (a) the ability of RC Holdco to satisfy its dividend requirements under the Preferred Shares held by RC ULC and (b) the ability of the Guarantors to satisfy the guarantee obligations of the Subordinated Notes.
16. Because RC Ltd. is the ultimate parent of the Guarantors and RC ULC and is required to:
 - (a) include in its public disclosure (*e.g.*, annual information form and material change reports) information concerning all of its material subsidiaries (including RC Holdco), and
 - (b) consolidate the financial position and results of operations of all of the other members of the RC entities,it is the public disclosure, including the consolidated financial statements, relating to RC Ltd. that is relevant from the perspective of a potential investor. Specifically, it is that information (not information relating solely to RC ULC) that permits an investor to determine (a) the ability of RC Holdco to satisfy its dividend requirements under the Preferred Shares and (b) the ability of the Guarantors to satisfy the guarantee obligations of the Subordinated Notes.
17. RC Ltd. has no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holdings of the Class A shares of RC Holdco and no material liabilities.
18. RC Ltd. controls all of its subsidiaries, including RC Holdco and RC ULC (the Subsidiaries).
19. RC ULC will send a form of proxy and information circular to holders of the Subordinated Notes resident in Canada in connection with any meeting of holders of Subordinated Notes, in the manner and at the time that such materials are required by the Legislation to be sent to the holders of the Subordinated Notes.

Decision

2005 BCSECCOM 585

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 (except for the Decision Makers in the Northwest Territories, with respect to the Continuous Disclosure Requirements, and in British Columbia, with respect to the Certification Requirements) pursuant to the Legislation is that the Continuous Disclosure Requirements and the Certification Requirements shall not apply to RC ULC, provided that:

1. RC Holdco continues to own all of the issued and outstanding voting securities of RC ULC;
2. RC Ltd. continues to control the Subsidiaries and continues to consolidate the financial information of the Subsidiaries in its financial information;
3. RC ULC continues to have no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holding of Preferred Shares and no material liabilities other than the Subordinated Notes;
4. RC Ltd. has and will continue to have no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holding of the Class A common shares of RC Holdco and no material liabilities;
5. RC Ltd. remains a reporting issuer in each of the Jurisdictions that provides for such a regime and complies with all of its reporting issuer obligations under such regime;
6. each of the Guarantors continues to provide a full and unconditional guarantee of RC ULC's obligations under the Subordinated Notes ;
7. the Filers file, in electronic format under RC ULC's SEDAR profile, copies of any and all documents that RC Ltd. is required to file pursuant to the Continuous Disclosure Requirements at the same time that such documents are required under the Legislation to be filed by RC Ltd. under its own SEDAR profile;
8. RC ULC complies with the Material Change Reporting Requirement in respect of material changes in the affairs of RC ULC that are not also material changes in the affairs of RC Ltd.;

2005 BCSECCOM 585

9. RC ULC complies with the Material Contracts Requirement in respect of contracts of RC ULC that would be material to RC ULC but would not be material to RC Ltd.;
10. RC ULC complies with the BAR Requirement in respect of business acquisitions that would be significant acquisitions to RC ULC but not to RC Ltd.;
11. RC ULC has not issued any securities to the public other than the Subordinated Notes;
12. RC Ltd. files copies of its own Annual Certificates and Interim Certificates on RC ULC's SEDAR profile at the same time that such documents are required to be filed by RC Ltd. on its own SEDAR profile;
13. the interim and annual financial statements filed by the Filers under RC ULC's SEDAR profile are accompanied by a notice indicating that all of the consolidated assets of the Guarantors, before any minority interest, are available to support the guarantee of RC ULC's obligations under the Subordinated Notes;
14. RC Ltd. remains an electronic filer under National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*;
15. RC Ltd. shall not have any Subsidiaries that are not Guarantors; and
16. RC ULC concurrently sends to all holders of Subordinated Notes all disclosure materials that RC Ltd. is required to send to holders of its securities, in the manner and at the time that such materials are required by the Legislation to be sent to the securityholders of RC Ltd.

John Hughes
Manager, Corporate Finance
Ontario Securities Commission