

2005 BCSECCOM 587

August 19, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the take over bid requirements - 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) and 114(2)(a)

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

and

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

and

In the Matter of
Controladora Mabe S.A. de C.V. (the “Filer”)

and

6295053 Canada Inc. (“Bidco”)

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 provisions in the Legislation prohibiting an offeror making or intending to make a take-over bid, and any person or company acting jointly or in concert with the offeror, from entering into any collateral agreement, commitment or

2005 BCSECCOM 587

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 “Prohibition on Collateral Benefits”) will not apply to the memorandum of understanding (as described herein) in connection with the formal take-over bid under the Legislation by the Filer (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 (collectively, the “Decision”).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this Decision unless they are defined in this Decision. As used herein, the following terms have the following meanings:

“Camco” means Camco Inc.;

“CBCA” means the *Canada Business Corporations Act*;

“Dryer Agreement” means the dryer agreement dated January 1, 2002 between GEC and Camco;

“GE Canada” means General Electric Canada Inc.;

“GEC” means General Electric Company;

“GSW” means GSW Inc.;

“Offer” means the offer to be made by Bidco to acquire all the Shares of Camco; and

“Shares” means all of the issued and outstanding common shares of Camco.

Representations

The decision is based on the following facts represented by the Filer:

1. the Filer is a corporation existing under the laws of Mexico and is not a reporting issuer or the equivalent in any Jurisdiction;

2005 BCSECCOM 587

2. the shares of the Filer are owned (i) as to 48.4% by GEC and (ii) as to 51.6% by the Berrondo, Saiz and Esteve families of Mexico and certain other Mexican-resident minority shareholders;
3. Bidco is a corporation existing under the CBCA and is a wholly-owned indirect subsidiary of the Filer, was incorporated specifically for the purpose of making the Offer and is not a reporting issuer or the equivalent in any Jurisdiction;
4. Camco is a corporation existing under the CBCA and is a reporting issuer or the equivalent in each Jurisdiction;
5. to the knowledge of the Filer, (i) the authorized capital of Camco consists of an unlimited number of Shares of which 20,000,000 Shares are outstanding, (ii) as at March 9, 2005, 10,200,000 Shares (51% of the outstanding Shares) were owned by GE Canada, a subsidiary of GEC, and 4,001,800 Shares (20% of the outstanding Shares) were owned by GSW and (iii) the Shares are listed on the Toronto Stock Exchange;
6. to the knowledge of the Filer, (i) GSW served GE Canada and GEC with a statement of claim in late 2000 alleging that GE Canada and GEC have dealt with Camco in a manner that has been oppressive to Camco's minority shareholders, (ii) in the statement of claim, GSW requested an order that GE Canada or GEC make an offer to GSW and other minority shareholders of Camco to purchase their Shares at a value to be determined by the court, (iii) although Camco was initially named as a defendant in the proceeding, no claim was made against or relief sought from Camco, and (iv) GSW and GEC subsequently agreed that Camco be removed as a party from the claim. The Filer is not a party to or otherwise involved in these legal proceedings;
7. Bidco proposes to make an all cash offer to the holders of Shares to acquire all of the outstanding Shares on the basis of \$3.52 per Share, representing a 53% premium to the closing price of the Shares on the Toronto Stock Exchange on Friday July 22, 2005;
8. the Offer will be made by take-over bid circular mailed to all holders of Shares. The take-over bid circular will be prepared in accordance with the Legislation including Rule 61-501, *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*, of the Ontario Securities Commission and Policy Q-27, *Protection of minority shareholders in the course of certain transactions*, of the Autorité des marchés financiers, in each case as they apply to insider bids;

2005 BCSECCOM 587

9. the Offer will be subject to the condition (among others) that there shall have been validly deposited under the Offer (and not withdrawn) that number of Shares constituting (i) at least 66 2/3% of the Shares on a fully-diluted basis and (ii) at least a majority of the outstanding Shares (calculated on a fully-diluted basis) the votes attached to which would be included in the minority approval of a second step transaction pursuant to Rule 61-501 and Policy Q-27;
10. in connection with the Offer, the board of directors of Camco formed an independent committee independent of GEC and its affiliates and independent of the management of Camco;
11. the independent committee has received a fairness opinion from National Bank Financial Inc. to the effect that the consideration under the Offer is fair from a financial point of view to the holders of Shares (other than GEC and its affiliates) and each of the independent committee and the Camco board of directors (with directors related to GEC and its affiliates abstaining) have (i) unanimously determined that the Offer is in the best interests of Camco and its shareholders and (ii) unanimously approved the Offer;
12. the Filer and Bidco entered into a support agreement with Camco on July 25, 2005 pursuant to which Bidco has agreed to make the Offer on the conditions (among others) that the Camco board of directors shall (i) unanimously recommended that the holders of Shares accept the Offer and (ii) shall have prepared and approved for distribution to the holders of Shares in connection with the Offer a directors' circular recommending acceptance of the Offer and containing a copy of the opinion from National Bank Financial Inc. that the consideration to be received under the Offer is fair from a financial point of view to the holders of Shares;
13. the consideration to be paid to GE Canada for its Shares deposited under the Offer is identical to the consideration to be paid to all other holders of Shares;
14. Camco and GEC are party to the Dryer Agreement pursuant to which Camco supplies GEC with automatic clothes dryers, the term of which is scheduled to expire on December 31, 2006 and which the Filer understands is a material contract to Camco;
15. the Dryer Agreement is a "fixed price" contract pursuant to which GEC has agreed to purchase minimum annual quantities of clothes dryers at a fixed price, which price is automatically reduced (i) annually over the term of the Dryer Agreement and (ii) if GEC purchases greater than a specified number of clothes dryers in a given period;

2005 BCSECCOM 587

16. as the Dryer Agreement is a “fixed price” contract, Camco bears the risk of commodity price and foreign exchange fluctuations which are adverse to Camco and garners the benefit of commodity price and foreign exchange fluctuations which are favourable to Camco;
17. in contemplation of the Offer, the Filer negotiated a memorandum of understanding with GEC providing that if the Offer is successful, the pricing arrangements under the Dryer Agreement will be amended from a “fixed price” arrangement to a “hybrid price” arrangement combining a mixture of “fixed price” and “cost plus” pricing, and certain other consequential amendments will be effected. Specifically:
 - (a) the term of the new Dryer Agreement will be ten years;
 - (b) effective January 1, 2005 (and as independently previously agreed to between GEC and Camco) the annual price reductions and volume rebates under the Dryer Agreement will be eliminated;
 - (c) a target “total contribution margin” will be established for the clothes dryers for ensuing years below which all of the economic benefit will accrue to Camco (as a subsidiary of the Filer) and above which GEC and Camco (as a subsidiary of the Filer) will share the economic benefit;
 - (d) Camco (as a subsidiary of the Filer) and GEC will co-operate to achieve productivity gains in the production of clothes dryers by Camco;
 - (e) Camco (as a subsidiary of the Filer) will be entitled to increase prices to GEC of clothes dryers in connection with adverse commodity price and foreign exchange fluctuations;
 - (f) Camco (as a subsidiary of the Filer) will be entitled to a price increase in each of 2006 and 2007 for clothes dryers; and
 - (g) GEC's current contractual restriction against the Filer directly selling its products in Canada will be eliminated;
18. if the Dryer Agreement becomes a “hybrid price” contract, Camco (as a subsidiary of the Filer) will not solely bear the risk of adverse commodity price and foreign exchange fluctuations and Camco (as a subsidiary of the Filer) will share with GEC some of the benefits of favourable commodity price and foreign exchange fluctuations;

2005 BCSECCOM 587

19. in addition to the changes to the Dryer Agreement outlined above, the memorandum of understanding also contemplates (i) the staged elimination of certain technology fees currently paid to GEC by Camco that are also currently paid to GEC by the Filer, (ii) the staged elimination of trademark licensing fees currently paid to GEC by Camco that are also currently paid to GEC by the Filer, and (iii) that Camco (as a subsidiary of the Filer) will become the exclusive export distributor and/or sales representative for products of GEC and the Filer that are exported from the United States and Latin America into Canada;
20. the memorandum of understanding would generally align the terms of the Dryer Agreement with the “cost plus” supply arrangements currently in place between GEC and the Filer;
21. the entering into of the memorandum of understanding was a condition to the Filer and Bidco proceeding with the Offer and the measures contemplated thereby are essential elements to the Filer's business plan for Camco going forward;
22. the terms of the memorandum of understanding will be described in the take-over bid circular mailed to the holders of Shares in connection with the Offer;
23. the Filer believes that the memorandum of understanding reflects commercially reasonable terms and expects that, barring significant fluctuations in applicable commodity prices and foreign exchange rates and absent any unforeseen contingencies or events, the memorandum of understanding will be economically neutral to GEC; and
24. the Filer believes that had the Offer been effected two years ago and the memorandum of understanding implemented at that time, given the generally unfavourable movement of commodity prices and foreign exchange rates over that period as they relate to Camco and its business, that GEC would have derived no economic benefit from the implementation of the memorandum of understanding and that the economic impact on Camco of the adverse movements in commodity prices and foreign exchange rates would have been lessened.

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.

2005 BCSECCOM 587

The decision of the Decision Makers under the Legislation is that the requested relief is granted.

DATED this 19th day of August, 2005.

Paul M. Moore

Robert W. Davis