

2005 BCSECCOM 187

March 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 54-101, s. 9.2 - An issuer wants relief from the requirement in section 2.12(1) of NI 54-101 to send meeting materials to proximate intermediaries at least four business days before the twenty-first day before the meeting - The applicant has publicly announced a proposed business combination/going private transaction by way of share consolidation; the applicant has submitted that it is critical that the shareholder vote in respect of the proposed transaction be held by a certain date; in order to preserve its ability to convene a special meeting on that date, it has filed a notice of meeting and record date on SEDAR and disclosed the fixing of the meeting date by press release; the Board of Directors of the applicant do not wish to determine whether to proceed with the proposed transaction until after the courts have heard a motion for advice and directions about the proposed transaction; the effect of the relief would be to abridge the period by which proxy-related materials must be delivered to proximate intermediaries for sending to beneficial owners of the applicant's securities from four business days to one business day; the service provider for the intermediaries has confirmed that it can accommodate the abridged time period

Applicable British Columbia Provisions

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, s. 9.2

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

and

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

and

In the Matter of
Hollinger Inc. (the Filer)

MRRS Decision Document

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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) for an exemption abridging time period of “three business days” to “one business day” contained in section 2.12 of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) pursuant to which an Information Circular and other required materials (the Meeting Materials) must be sent to proximate intermediaries (as that term is defined in NI 54-101) before the twenty-first day before the date fixed for a special meeting of shareholders of the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator of 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 a corporation governed by the *Canada Business Corporations Act*. It is a reporting issuer or its equivalent under the applicable securities laws of each of the provinces and territories of Canada and is a “foreign private issuer” under the applicable federal securities laws of the United States.
2. The authorized capital of the Filer consists of an unlimited number of retractable common shares (the Common Shares), an unlimited number of Exchangeable Non-Voting Preference Shares Series I (the Series I Preference Shares), an unlimited number of Exchangeable Non-Voting Preference Shares Series II (the Series II Preference Shares) and an unlimited number of Retractable Non-Voting Preference Shares Series III (the Series III Preference Shares). As at March 1, 2005, 34,945,776 Common Shares, no Series I Preference Shares, 1,701,995 Series II Preference Shares and no Series III Preference Shares are issued and outstanding. The only voting securities of the Filer are the Common Shares.

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3. The outstanding Common Shares and Series II Preference Shares are listed on the Toronto Stock Exchange under the symbols “HLG.C” and “HLG.PR.B”, respectively.
4. On October 28, 2004, the Filer issued a press release disclosing a proposed business combination/going private transaction involving the Filer by way of a consolidation of the outstanding Common Shares and Series II Preference Shares (the Proposed Transaction) and certain enabling transactions (the Enabling Transactions) which would permit the Proposed Transaction to be considered by the shareholders of the Filer and to provide the necessary financing to complete the Proposed Transaction should the shareholders of the Filer elect to approve the Proposed Transaction. The Enabling Transactions are effective if, and only if, all necessary corporate, shareholder and regulatory approvals in connection with the Proposed Transaction relating to the outstanding Common Shares have been obtained on or prior to March 31, 2005.
5. Although the Board of Directors of the Filer has not yet determined whether or not to proceed with the Proposed Transaction, in order to preserve the ability of the Filer to convene a special meeting on March 31, 2005, a notice of meeting and record date has been filed on the System for Electronic Document Analysis and Retrieval (SEDAR) with respect to a special meeting of shareholders of the Filer to be held on March 31, 2005. The fixing of the meeting date has also been disclosed by way of press release by the Filer.
6. In order to meet the time requirements prescribed in section 2.12 of NI 54-101, the Meeting Materials are required to be sent to beneficial holders by March 10, 2005 and provided to proximate intermediaries by March 7, 2005.
7. On February 25, 2005, the independent directors of the Filer filed a motion (the Motion) in the Ontario Superior Court of Justice for advice and direction as to whether the Proposed Transaction should be put to the shareholders of the Filer. The Motion is scheduled to be heard on March 7, 2005.
8. It is the preference of the independent directors of the Filer that the determination as to whether or not to proceed with the Proposed Transaction be made after the Motion is heard on March 7, 2005. Consequently, the Filer will not be able to complete and deliver the Meeting Materials to the proximate intermediaries by March 7, 2005, the date required pursuant to section 2.12 of NI 54-101.
9. The Filer will file the Meeting Materials on SEDAR.

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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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

Margo Paul
Director, Corporate Finance