

2005 BCSECCOM 624

September 29, 2005

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 requires relief from the requirement to disclose in its bid circular that it will take up and pay for shares on a pro rata basis and from the requirement to disclose the exact number of shares it intends to purchase under the bid - The issuer is disclosing the number of shares it is seeking to purchase plus an additional unspecified number of shares to reduce odd lots. Because it is reducing odd lots, the issuer cannot comply with the requirement to disclose that it will take up and pay for all shares deposited on a pro rata basis. The variation in the number of shares that the issuer may purchase under the bid as a result of reducing the odd lots is small and so the potential for shareholder confusion is minimal. The shares the issuer takes up to reduce odd lots will be in addition to the shares it is seeking under the bid

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 before 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), 114(2)

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

Form 62-903F, Items 2 and 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
Brascan 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 Limited Voting shares (Shares) under an issuer bid (the Offer), the Filer be exempt from the following requirements in the Legislation (the Requested Relief):
- (a) to take up and pay for securities proportionately according to the number of securities deposited by each securityholder and disclose the proportionate take-up and payment in the issuer bid circular (the Pro Rata Take Up Requirement);
 - (b) to state the total number of securities sought under the Offer (the Number of Securities Requirement); and
 - (c) in all Jurisdictions other than Ontario and Québec, to obtain a valuation of the Shares and disclose the valuation in the issuer bid circular (the Valuation Requirement).

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 represented by the Filer:
1. the Filer is a reporting issuer in each of the Jurisdictions and is not in default of any requirement of the Legislation;
 2. the Filer's authorized capital includes

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- (a) an unlimited number of Shares, of which approximately 260,623,718 were outstanding as at August 31, 2005,
 - (b) 85,120 Class B Limited Voting shares,
 - (c) an unlimited number of Class A Preference shares, issuable in series and currently consisting of 72,753,701 outstanding shares of 14 different series, and
 - (d) an unlimited number of Class AA Preference shares, issuable in series, none of which are outstanding;
3. the Shares trade on the Toronto Stock Exchange (the TSX) and the New York Stock Exchange;
4. Partners Limited (Partners) and its shareholders are the only holders of more than 10% of the outstanding Shares;
5. Partners and its shareholders beneficially own, exercise control or direction over, or have options and warrants to acquire, approximately 45 million Shares, representing approximately 17% of the outstanding Shares on a fully diluted basis;
6. Partners has told the Filer that it does not intend to tender any Shares to the Offer;
7. subject to paragraph 8(b), the Filer wishes to repurchase up to 12.2 million Shares under the Offer;
8. if shareholders tender more than 12.2 million Shares to the Offer,
 - (a) the Filer will take the tendered Shares, except Shares described in paragraph (b), up on a pro rata basis, and
 - (b) to reduce the number of odd lots held by its shareholders, in addition to the 12.2 million Shares, the Filer will also purchase all of the Shares tendered by any shareholder
 - (i) who tenders all of his or her Shares to the Offer, and
 - (ii) who, before tendering his or her Shares to the Offer, owned less than 100 Shares (Odd Lot Holders);

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9. since the Offer is for less than all the Shares, if more than 12.2 million Shares are tendered to the Offer, the Legislation would require the Filer to comply with the Pro Rata Take Up Requirement, including among the Odd Lot Holders;
10. the Filer cannot comply with the Pro Rata Take Up Requirement among the Odd Lot Holders because of the procedure set out in paragraph 8(b);
11. there is a “liquid market” in the Shares, as defined in Ontario Securities Commission Rule 61-501 (OSC Rule 61-501), because
 - (a) there is a published market for the Shares,
 - (b) during the 12-months before August 31, 2005,
 - (i) there were always at least 5,000,000 Shares outstanding, excluding Shares subject to resale restrictions or that were beneficially owned, or over which control or direction was exercised, by related parties,
 - (ii) the aggregate trading volume of the Shares on the TSX was at least 1,000,000 Shares,
 - (iii) there were at least 1,000 trades in Shares on the TSX, and
 - (iv) the aggregate trading value based on the price of the trades referred to in clause (iii) was at least \$15,000,000, and
 - (c) the market value of the Shares on the TSX, as determined in accordance with applicable rules, was at least \$75,000,000 for August 2005;
12. because it is reasonable to conclude that, after 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 when the Offer is made, the Filer is able to rely upon the exemption from the Valuation Requirement in section 3.4(3) of OSC Rule 61-501 and section 3.4(3) of Quebec Local Policy Statement Q-27 (the Liquid Market Exemptions);
13. the Filer cannot comply with the Number of Securities Requirement because it cannot determine the number of Shares it will acquire under the procedure set out in paragraph 8(b);
14. the Circular will

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- (a) disclose the mechanics for the take-up of and payment for, or the return of, Shares under the Offer,
- (b) explain that, by tendering Shares, a shareholder can reasonably expect that the Filer will purchase the tendered Shares on a pro rata basis, subject to the procedure set out in paragraph 8(b);
- (c) disclose the total number of Shares the Filer is offering to acquire under the Offer, subject to the procedure set out in paragraph 8(b),
- (d) disclose the facts supporting the Filer's reliance on the Liquid Market Exemptions; and
- (e) except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids.

Decision

¶ 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) the Filer takes up Shares deposited under the Offer in accordance with paragraph 8, and
- (b) the Filer can rely on the Liquid Market Exemptions.

Martin Eady, CA
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British Columbia Securities Commission