

2003 BCSECCOM 539

Headnote

Mutual Reliance Review System for Exemptive Relief Application –relief granted under MI 45-102 from the requirement to have a current AIF to be a qualifying issuer - relief granted from the prospectus requirement to permit issuer to rely on the short form offering document system without having a current AIF - CPC permitted to rely on its filing statement instead of a CPC information circular

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76

Multilateral Instrument 45-102 *Resale of Securities*, ss. 1.1, 4.1

BC Instrument 45-509 *Short Form Offering of Listed Securities and Units by Qualifying Issuers*

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF VENDIN ONE CAPITAL CORP.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from Vendin One Capital Corp. (“Vendin”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
- (a) the prospectus requirement contained in the Legislation shall not apply to certain trades in securities of Vendin; and
 - (b) the requirement contained in Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) for a qualifying issuer to have a current AIF filed on SEDAR shall not apply to Vendin;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

2003 BCSECCOM 539

- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS Vendin has represented to the Decision Makers that:
1. Vendin was incorporated on June 28, 2000 under the *Yukon Business Corporations Act* and its head office is in Vancouver, British Columbia;
 2. Vendin is a reporting issuer under the Legislation in each of the Jurisdictions and is not in default of its obligations under the Legislation;
 3. Vendin's authorized capital consists of unlimited common shares without par value, of which 3,100,000 common shares were outstanding as at June 13, 2003;
 4. Vendin is a Capital Pool Company, as defined in MI 45-102, whose common shares are listed for trading on the TSX Venture Exchange (the "Exchange");
 5. Vendin's fiscal year end is December 31;
 6. under a letter of intent dated February 17, 2003, as amended, Vendin has agreed to acquire (the "Acquisition") from Cynergy Capital Corp. ("Cynergy") all of the common shares of Elipe S.A. ("Elipe"), an Ecuadorian incorporated company;
 7. Elipe is the title holder to certain mineral development concessions in Ecuador;
 8. as consideration for all of the common shares of Elipe, Vendin will issue 7,000,000 of its common shares to Cynergy;
 9. in conjunction with the Acquisition, Vendin proposes to change its name (the "Change of Name"), undergo a share consolidation (the "Consolidation") and undertake both a non-brokered private placement (the "Non-Brokered Private Placement") and a brokered private placement of units ("Units") comprised of common shares and share purchase warrants (the "Brokered Private Placement" and collectively with the Change of Name, the Consolidation, the Non-Brokered Private Placement and the Acquisition, the "Proposed Transaction");
 10. the Proposed Transaction will constitute Vendin's "qualifying transaction" under Exchange Policy 2.4 *Capital Pool Companies* (the "CPC Policy");

2003 BCSECCOM 539

11. completion of the Proposed Transaction is subject to a number of conditions, including final acceptance of the Proposed Transaction by the Exchange and completion of the Non-Brokered Private Placement and the Brokered Private Placement;
12. because Vendin is not required to obtain specific shareholder approval of its qualifying transaction, it will not be preparing or filing an information circular disclosing the Acquisition;
13. under the CPC Policy, in lieu of an information circular, Vendin has prepared and filed a filing statement in accordance with Exchange Form 3B2 *Information Required in a Filing Statement for a Qualifying Transaction* (the "Filing Statement") with the Exchange at least seven days before the closing of the qualifying transaction;
14. the Filing Statement includes the same disclosure about the Proposed Transaction as would have been included in an information circular, including the following:
 - (a) audited financial statements for Vendin's most recently completed financial year;
 - (b) audited financial statements for Elipe's most recently completed financial year;
 - (c) a pro forma balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor; and
 - (d) detailed disclosure on both Vendin and Elipe and on the resulting issuer upon completion of the Proposed Transaction;
15. the Filing Statement has been filed on SEDAR and has been reviewed by and approved by the staff at the Exchange; and
16. because Vendin is filing the Filing Statement rather than an information circular in connection with its qualifying transaction:
 - (a) it will not have a current AIF for the purposes of MI 45-102 and the definition of qualifying issuer; and
 - (b) it will not have filed a Current AIF for the purposes of distributing the Units in the Brokered Private Placement under a short form offering document under BC Instrument 45-509 *Short Form Offering of Listed*

2003 BCSECCOM 539

Securities and Units by Qualifying Issuers (“BCI 45-509”) and ASC Blanket Order 45-507 *Offerings by CDNX Short Form Offering Document* (“Alberta Order 45-507”);

- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that:
1. the prospectus requirement shall not apply to Vendin in respect of the trades in the Units under the Brokered Private Placement provided that:
 - (a) it complies with all of the conditions of BCI 45-509 and Alberta Order 45-507 except the requirements to have filed a “Current AIF” as defined in BCI 45-509 and Alberta Order 45-507, and to incorporate the Current AIF into its short form offering document;
 - (b) Vendin’s short form offering document incorporates the Filing Statement by reference;
 - (c) any trade in securities acquired under this decision document or on the exercise of a securities acquired under this decision document:
 - (i) where the seller was, at the time the seller acquired the security, a Designated Hold Purchaser as defined in BCI 45-509 or Alberta Order 45-507, or
 - (ii) that was acquired by any other purchaser in excess of \$40,000,is deemed to be a distribution unless the conditions in subsection 2.5 of MI 45-102 are satisfied;
 2. the requirement contained in the definition of qualifying issuer in MI 45-102 to have a current AIF filed on SEDAR shall not apply to Vendin provided that:
 - (a) Vendin files:

2003 BCSECCOM 539

- (i) the Filing Statement with the Jurisdictions before the closing of the Proposed Transaction along with a notice indicating that it has filed the Filing Statement as an alternative form of AIF and identifying the SEDAR project number under which the Filing Statement was filed; and
 - (ii) a Form 45-102F2 on or before the tenth day after the distribution date of any securities issued by it certifying that it is a qualifying issuer except for the requirement that it have a current AIF; and
- 3. this order expires 140 days after Vendin's financial year ended December 31, 2003.

¶ 8 DATED August 1, 2003.

Brenda Leong
Director