

2003 BCSECCOM 743

Headnote

Relief from take over bid requirements in connection with the purchase of all of one class of shares of a reporting issuer from a single seller – seller unable to rely on statutory exemptions because the offer is being made to all security holders of the class

Exemption Order

Tricor Acquisition (STP) Inc.

Section 114(2)(c) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Tricor Acquisition (STP) Inc. (Tricor) applied for exemption from the requirements of sections 105 to 110 of the Act (the take over bid requirements) in connection with an offer to purchase 20,000 Class B common shares of Pacific Northern Gas Ltd. (Pacific) from Westcoast Energy Inc. (Westcoast).

Representations

- ¶ 2 Tricor represents that:
1. it is incorporated under the *Canada Business Corporations Act* and its registered office is located in Vancouver;
 2. it is a wholly-owned subsidiary of Tricor Pacific Capital, Inc. (Tricor Pacific);
 3. it and Tricor Pacific are affiliates of Tricor Pacific Capital Partners (Fund III) Inc., which is the general partner of, and manages a private equity fund, Tricor Pacific Capital Partners (Fund III), Limited Partnership (Tricor Fund III);
 4. none of Tricor, Tricor Pacific or Tricor Fund III are reporting issuers, or have any intention of becoming reporting issuers, in any jurisdiction in Canada;
 5. none of Tricor, Tricor Pacific or Tricor Fund III currently owns or exercises control or direction over any securities of Pacific;
 6. Pacific is incorporated under the laws of British Columbia, and is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario and Quebec;

2003 BCSECCOM 743

7. the authorized capital of Pacific consists of:
 - (a) 6,000,000 Class A non-voting common shares (Class A Shares) of which 3,563,280 are issued and outstanding;
 - (b) 20,000 Class B common shares (Class B Shares) of which 20,000 are issued and outstanding;
 - (c) 1,400,000 cumulative redeemable junior preferred shares none of which are issued and outstanding; and
 - (d) 200,000 6.75% cumulative redeemable preferred shares of which 200,000 are issued and outstanding;
8. Westcoast is the registered and beneficial owner of 1,420,200 Class A Shares (representing approximately 40%) and all of the 20,000 issued and outstanding Class B Shares;
9. the Class A Shares and Class B Shares are identical in all respects, except that the Class A Shares do not have voting rights;
10. Tricor and Westcoast have entered into a purchase agreement, under which Tricor (as nominee for Tricor Fund III) intends to purchase all of the Class A Shares and Class B Shares held by Westcoast;
11. the purchase price for the Class A Shares and Class B Shares will be \$13.00 per share, with up to an additional \$1.00 per share payable in certain circumstances;
12. the Class A Shares are listed on the Toronto Stock Exchange, and there is no published market for the Class B Shares;
13. it is a condition to the transaction that the Class A Shares be altered to remove the restriction on voting, and that all of the issued Class A Shares and Class B Shares be redesignated as a single class of common shares with one vote per share;
14. subject to regulatory approval, the redesignated shares will trade on the Toronto Stock Exchange in place of the Class A Shares;
15. the offer for the Class A Shares is exempt under section 98(1)(c) of the Act from the take over bid requirements because:

2003 BCSECCOM 743

- (a) it is being made solely to Westcoast, and not generally to the holders of the Class A Shares; and
- (b) the consideration is not greater than 115% of the market price determined in accordance with the regulations;

16. the offer for the Class B Shares is not exempt from the take over bid requirements because Tricor cannot state that the bid is not made generally to the class of security holders as Westcoast is the sole holder of the Class B Shares.

Order

¶ 3 Because it is not prejudicial to the public interest the Commission orders under section 114(2)(c) of the Act that Tricor is exempt from the take over bid requirements in connection with its offer to purchase 20,000 Class B Shares from Westcoast.

¶ 4 November 5, 2003

Brenda Leong
Director