

# 2006 BCSECCOM 688

October 24, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Securities Act - Identical consideration - Issuer needs relief from the requirement in s. 107(1) of the *Securities Act* (British Columbia) that all holders of the same class of securities must be offered identical consideration (the Identical Consideration Requirement) - Under the bid, Canadian resident shareholders may receive shares, cash, or a combination of both; US resident shareholders will receive substantially the same value as Canadian shareholders, in the form of cash paid to the US shareholders based on the proceeds from the sale of their shares; the number of shares held by US residents is de minimis; and the US does not have an identical consideration requirement

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 107(1), 114(2)

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova  
Scotia, New Brunswick 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 Cyries Energy Inc.  
(the Filer)

## 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) for an exemption from the requirement in the Legislation to offer identical consideration to all holders of the class of securities subject to a take-over

## 2006 BCSECCOM 688

bid (the Identical Consideration Requirement) to all holders of the same class of securities that are subject to a take-over bid (the Requested Relief) in connection with a proposed securities exchange take-over bid to be made by the Filer for all issued and outstanding common shares (the Dual Shares) of Dual Exploration Inc. (Dual).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined differently in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 The Filer is a public company incorporated under the laws of Alberta with its head office in Calgary, Alberta.
  - 4.2 The Filer is currently a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador.
  - 4.3 The Filer is a "foreign private issuer" within the meaning of Rule 405 of Regulation C adopted by the SEC under the 1933 Act.
  - 4.4 Dual is a public company incorporated under the laws of Alberta with its head office in Calgary, Alberta.
  - 4.5 Dual is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Ontario and Québec.
  - 4.6 Effective October 4, 2006, the Filer and Dual entered into an acquisition agreement, under which the Filer agreed to make a formal offer (the Take-Over Bid) to purchase all of the Dual Shares in consideration for shares of the Filer (Cyries Shares) on the basis of 0.167 of a Cyries Share for each Dual Share.

## 2006 BCSECCOM 688

- 4.7 Approximately 5% of the issued and outstanding Dual Shares on a non-diluted basis (approximately 4.5% on a fully diluted basis) are currently beneficially held by holders resident in the United States (the US Shareholders).
- 4.8 Because the Cyries Shares issuable under the Take-Over Bid to the US Shareholders have not been registered or otherwise qualified for distribution under the 1933 Act and are not eligible for sale under the securities laws of a substantial number of states in the United States without registration, the offer, sale and delivery of the Cyries Shares to US Shareholders without further action by the Filer would constitute a violation of United States securities laws.
- 4.9 Rule 802 under the 1933 Act (Rule 802) would provide an exemption from the requirement that the Cyries Share be registered under the 1933 Act if the US Shareholders are offered terms at least as favourable as those offered to other holders of securities of the same class, subject to an exception which allows the Filer to offer cash consideration to US Shareholders resident in states that do not have an applicable state "blue sky" exemption.
- 4.10 There is no general exemption from state "blue sky" laws that coordinates with Rule 802. As a result, the securities laws of a significant number of states would prohibit delivery of the Cyries Shares to US Shareholders without registration or qualification of the Cyries Shares to be issued to US Shareholders resident in such states unless such holders are exempt institutional investors.
- 4.11 The Filer is not eligible to rely on any of the forms and procedures set forth in the Multijurisdictional Disclosure System in respect of the Take-Over Bid for relief from the United States tender offer rules.
- 4.12 Registration under the 1933 Act of the Cyries Shares deliverable to US Shareholders would be costly and burdensome to the Filer.
- 4.13 For US Shareholders or holders of Dual Shares who appear to the Filer or to the depositary designated under the Take-Over Bid (the Depositary) to be US Shareholders, who are resident in one of the subject states with no available registration exemption and who are not exempt institutional investors, the Filer proposes to deliver to the Depositary the Cyries Shares that those US Shareholders would otherwise be entitled to receive under the Take-Over Bid, and that the

## 2006 BCSECCOM 688

Depository will then sell the Cyries Shares on behalf of those US Shareholders and deliver to them their respective pro rata share of the cash proceeds of sale less commissions and applicable withholding taxes.

- 4.14 Any sale of the Cyries Shares described in paragraph 4.13 will be completed as soon as commercially reasonable following the date on which the Filer takes up the Dual Shares tendered by the US Shareholders under the Take-Over Bid.
- 4.15 The Take-Over Bid circular and letter of transmittal to be prepared by the Filer and sent to all holders of Dual Shares will disclose the procedure described in paragraph 4.13 to be followed for US Shareholders who tender their Dual Shares pursuant to the Take-Over Bid.
- 4.16 Except to the extent that relief from the Identical Consideration Requirement is granted, the Take-Over Bid will otherwise be made in compliance with the requirements under the Legislation governing take-over bids.

### **Decision**

- 5. 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.
- 6. The decision of the Decision Makers under the Legislation is that, in connection with the Take-Over Bid, the Requested Relief is granted so that US Shareholders who would otherwise receive Cyries Shares under the Take-Over Bid instead receive cash proceeds from the sale of those Cyries Shares in accordance with the procedure set out in section 4.13.

Glenda A. Campbell, QC, Vice-Chair  
Alberta Securities Commission

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