

2006 BCSECCOM 181

January 31, 2006

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 take up and pay for shares on a pro rata basis and from the associated disclosure requirement - The issuer intends to reduce the number of odd lot holders as part of its issuer bid; other than securities tendered by odd lot holders, the issuer 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

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110, and 114(2)

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

and

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

and

In the Matter of
MediSolution Ltd. (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) that:
 - (a) the Filer be exempt from the requirements in the Legislation to take up and pay for securities proportionately according to the number of securities deposited by each security holder and disclose the proportionate take-up and payment (the Pro Rata Take Up Requirement) in the circular of the

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Filer regarding its proposed purchase of a portion of its outstanding securities under an issuer bid (the Offer), and

- (b) this decision be kept confidential until the earlier of the Filer's announcing the Offer and February 15, 2006, (the Requested Relief).

Under the Mutual Reliance Review system for Exemptive Relief Applications (the System):

- (a) the Autorité des marchés financiers (the Autorité) 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:
 - (a) The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any requirement of the Legislation.
 - (b) The Filer's authorized capital includes:
 - (i) an unlimited number of common shares (the Shares), of which approximately 159,738,596 were outstanding as at December 15, 2005; and
 - (ii) an unlimited number of Class A special shares, issuable in series, none of which are outstanding.
 - (c) The Shares trade on the Toronto Stock Exchange (the TSX).
 - (d) No person or company holds more than 10% of the Shares other than a wholly-owned subsidiary of Brookfield Asset Management Inc. (BAM), which beneficially owns or exercises control or direction over approximately 95 million Shares, representing approximately 60% of the outstanding Shares.

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- (e) BAM has advised the Filer that it does not intend to tender any Shares to the Filer's proposed purchase of a portion of the outstanding Shares under the Offer.
- (f) The Filer wishes to repurchase up to 15 million Shares under the Offer, representing approximately 9.4% of the outstanding Shares, through the Offer, provided the necessary relief requested herein is obtained from the Decision Makers.
- (g) The Filer anticipates using cash obtained through a loan advanced to it by a subsidiary of BAM to repurchase Shares under the Offer.
- (h) If shareholders tender more than 15 million Shares to the Offer, the Filer will take up the tendered Shares on a pro rata basis, except that:
 - (i) the Filer intends to first accept Shares deposited by any shareholder who owns fewer than 500 Shares (an Odd Lot), who deposits all of the shareholder's Shares and who checks the Odd Lot box in the Letter of Transmittal relating to the Offer, and
 - (ii) the proration will be adjusted without further action by a shareholder in order to avoid creating Odd Lots as a result of proration, by increasing the number of Shares purchased by the Filer from each shareholder so that Shares returned as a result of proration will only be returned in whole multiples of 500 Shares or, if proration would result in the return of less than 500 Shares, the Filer will purchase all of the shareholder's tendered Shares.
- (i) Since the Offer is for less than all the Shares, if more than 15 million Shares are tendered to the Offer, the Legislation would require the Filer to comply with the Pro Rata Take Up Requirement.
- (j) The Filer cannot comply with the Pro Rata Take Up Requirement because of the procedure set out in sub-paragraph (h).
- (k) The issuer bid circular will:
 - (i) disclose the mechanics for the take-up of and payment for, or the return of, Shares under the Offer;
 - (ii) 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 sub-paragraph (h); and

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- (iii) 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 the Filer complies with representation 3(k).

Josée Deslauriers
Surintendante aux marchés de valeurs
Autorité des marchés financiers

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers