

# 2007 BCSECCOM 592

September 25, 2007

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

*Securities Act* s. 114(2) Issuer Bids - Exemption from Issuer Bid Requirements - The issuer is making an issuer bid under a modified Dutch auction - It cannot disclose that it will take up and pay for shares deposited on a pro rata basis or the total number of shares it will acquire under the bid - The issuer is disclosing the maximum amount it will spend under the bid, and the minimum and maximum amount it will pay for shares tendered; as a result, the potential for confusion is minimal

*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 prior to 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, s. 105(g), 114(2)

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

Form 62-903F, Item 2 & Item 9

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova  
Scotia, Newfoundland and Labrador, New Brunswick, Northwest Territories,  
Nunavut and the Yukon  
(the Jurisdictions)

and

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

and

In the Matter of  
Mediagrif Interactive Technologies Inc  
(the Filer)

MRRS Decision Document

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### **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 each of the Jurisdictions (the Legislation) that, in connection with the proposed purchase by the Filer of a portion of its outstanding common shares (Shares) pursuant to an issuer bid (the Offer), the Filer be exempt from the requirements in the Legislation:

- (a) to take up and pay for securities proportionately according to the number of securities deposited by each security holder;
  - (b) to provide disclosure in the issuer bid circular dated August 16, 2007 and filed on SEDAR (the Circular) of the proportionate take-up and payment;
  - (c) to state the number of securities sought under the Offer (the Number of Securities Requirement); and
  - (d) except in Ontario and Québec, obtain a valuation of the Shares and provide disclosure in the Circular of such valuation, or a summary of the valuation (the Valuation Requirement);
- (collectively, the Requested Relief).

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 or the equivalent in each of the Jurisdictions;

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2. the Filer is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable;
3. the Filer was incorporated under the *Canada Business Corporations Act* by articles of incorporation dated February 16, 1996; the head office of the Filer is located at 1010 de Serigny, Bureau 800, Longueuil, Quebec, Canada, J4K 5G7;
4. the Filer's authorized capital consists of an unlimited number of Shares and an unlimited number of preferred shares, of which approximately 17,786,745 Shares were issued and outstanding as at August 7, 2007;
5. the Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX);
6. to the best of the Filer's knowledge, no person or company holds more than 10% of the Shares, other than Montrusco Bolton Investments Inc. (Montrusco), which owns 2,307,975 Shares, representing approximately 13% of the Shares, and Gestion de portefeuille Natcan Inc. (Gestion), which owns 3,369,055 Shares, representing approximately 18.9% of the Shares; Gestion advised the Filer that it currently has the intention to deposit the number of Shares under the Offer necessary to maintain its shareholding position below 20% of the issued and outstanding Shares; Montrusco advised the Filer that it currently has the intention to deposit Shares under the Offer but did not disclose to the Filer the number of Shares that it would be depositing under the Offer;
7. on August 7, 2007, the closing price of the Shares on the TSX was \$9.00 and on such date the Shares had an aggregate market value of approximately \$160,080,705, based on such closing price;
8. as specified in the Circular, the Filer is conducting the Offer under a modified Dutch auction procedure (the Dutch Auction), as follows:
  - (a) the Circular specifies that the maximum amount the Filer will expend pursuant to the Offer is \$25 million (the Specified Amount);
  - (b) the Circular specifies the range of prices (the Price Range) being a range or prices of not less than \$7.80 per Share and not more than \$9.50 per Share within which the Filer is prepared to purchase the Shares;

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- (c) the maximum number of Shares that the Filer will take up under the Offer is 3,205,128;
- (d) each holder of Shares (collectively, the Shareholders) wishing to tender to the Offer will have the right either to:
  - (i) specify the lowest price within the Price Range at which such Shareholder is willing to sell its tendered Shares (an Auction Tender), or
  - (ii) not specify a price but elect to be deemed to have tendered the Shares purchased at the Purchase Price (determined according to subparagraph 8(f) below) (a Purchase Price Tender);
- (e) the aggregate dollar amount the Filer will expend pursuant to the Offer will remain variable until the Purchase Price is determined and the pro-rating is calculated in accordance with the procedures outlined on subparagraph 8(j) below;
- (f) the price per Share (Purchase Price) for the Shares tendered to the Offer and not withdrawn will be the lowest price that will enable the Filer to purchase the maximum number of Shares that may be purchased with the Specified Amount, and it will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Price Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price within the Price Range for the purpose of calculating the Purchase Price;
- (g) all Shares tendered at prices above the Purchase Price will be returned to the appropriate Shareholders;
- (h) all Shares tendered at or below the Purchase Price will be taken up and paid for at the Purchase Price subject to pro-rationing procedures described in subparagraph 8(j) below;
- (i) all Shares tendered and not withdrawn by Shareholders who fail to specify any tender price for such tendered Shares or fail to indicate that they have tendered their Shares pursuant to a Purchase Price Tender will be considered to have been tendered pursuant to a Purchase Price Tender;
- (j) if the aggregate Purchase Price for Shares validly tendered to the Offer and not withdrawn exceeds the Specified Amount, the Filer will purchase the

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tendered Shares on a *pro rata* basis, except that, to prevent “Odd Lot” deposits, the Filer will first purchase and not pro-rate, the Shares properly deposited by each Shareholder who owns fewer than 100 Shares and who properly tenders all such Shares at or below the Purchase Price;

- (k) depositing Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they wish to deposit will not be considered to have deposited any Shares held by such Shareholders;
  - (l) if the Offer is under-subscribed by the initial expiration date but all the terms and conditions thereof have been complied with except those waived by the Filer, the Filer may extend the Offer for at least 10 days, but the Legislation would require the Filer to first take up and pay for all Shares deposited and not withdrawn; all Shares tendered at that time and not withdrawn will be taken up and paid for at the Purchase Price, which would also be the price applicable for the Offer during the extended bid period; and
  - (m) by the time any extended bid period is over, the Offer may be over-subscribed, in which case the Filer intends to pro-rate only among the tendered Shares received during the extension and after the original expiration date (and subject to the exception relating to “Odd Lots” described in (i) above);
9. prior to the expiry of the Offer, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential by the depositary under the Offer, and the depositary will be directed by the Filer to maintain such confidentiality until the Purchase Price has been determined;
10. since the Offer is for less than all the Shares, if the number of Shares tendered to the Offer and not withdrawn exceeds the Specified Amount worth of Shares, the Legislation would require the Filer to:
- (a) take up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder; and
  - (b) disclose in the Circular that the Filer would, if Shares tendered to the Offer exceeded the Specified Amount worth of Shares, take up the Shares proportionately according to the number of Shares tendered by each Shareholder;

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11. prior to the commencement of the Offer, there were approximately 17,786,745 Shares outstanding, of which 9,481,005 Shares comprised the public float;
12. there is a published market for the Shares, namely, the TSX, and during the 12-month period before August 7, 2007:
  - (a) the number of issued and outstanding Shares was at all times at least 5,000,000, excluding Shares beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties of the Filer and Shares that were not freely tradeable;
  - (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000 Shares;
  - (c) there were at least 1,000 trades in Shares on the TSX;
  - (d) the aggregate trading value based on the price of the trades referred to in clause (c) was at least \$15,000,000; and
  - (e) the market value of the Shares on the TSX as determined in accordance with Ontario Securities Commission Rule 61-501 (Rule 61-501) and Regulation Q-27 of the Autorite des marches financiers (Regulation Q-27) was at least \$75,000,000 for the month of July 2007;
13. the 3,205,128 Shares that the Filer has offered to repurchase represents approximately 18% of the market capitalization of the Filer on August 7, 2007;
14. the Circular discloses the facts supporting the conclusion that the Shares meet the test for a “liquid market” as set out in paragraph 12 and that it is reasonable to conclude that, following completion of 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 at the time the Offer is made and the Filer intends to rely upon the exemptions from the Valuation Requirement in section 3.4(3) of OSC Rule 61-501 and Regulation Q-27 (the Presumption of Liquid Market Exemptions);
15. the Filer cannot comply with the Number of Securities Requirement because it cannot specify the number of Shares it will acquire pursuant to the procedure described in paragraph 8 above; and

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16. the Circular:

- (a) discloses the mechanics for the take-up of and payment for, or the return of, Shares as described in paragraph 8 above;
- (b) explains that, by tendering Shares at the lowest price in the Price Range or under a Purchase Price Tender, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to pro ration as described in paragraph 8 above;
- (c) describes the background to the Offer;
- (d) discloses the facts supporting the Filer's reliance on the Presumption of Liquid Market Exemptions as updated to the date of the announcement of the Offer;
- (e) except to the extent exemptive relief is granted by this decision, contains the disclosure prescribed by the Legislation for issuer bids; and
- (f) describes the review and approval process adopted by the board of directors of the Filer for the Offer, including any materially contrary view or abstention by a director.

### **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) Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to Shareholders, in the manner described in paragraph 8; and
- (b) for the Valuation Requirement, the Filer can rely on the Presumption of Liquid Market Exemptions.

Martin Eady, CA  
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British Columbia Securities Commission