

2005 BCSECCOM 381

May 5, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Securities Act s. 119 - Proxies/Information Circular Requirements - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the third year of historical financial information for the issuer has little relevance to the new issuer going forward as the issuer underwent a CCAA restructuring two years ago that resulted in, among other things, fresh start accounting; alternate financial information will be provided about the issuer that is sufficient for shareholders to assess the transaction as a whole

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 9.1 and 13.1
Form 51-102F5, Item 14.2

In the Matter of
the Securities Legislation of British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, Québec, New Brunswick, Nova Scotia, Yukon, Nunavut 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
Vicwest Corporation (the Filer)

MRRS Decision Document

Background

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 relief from the requirement to include audited financial statements for the three most recent

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financial years of the Filer in the management information circular (the Circular) of the Filer with respect to a plan of arrangement and in Québec, a variation of the general order that will provide the same result as an exemption order (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for the application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated on March 10, 2000 and exists validly under the laws of the Province of Ontario.
2. The Filer has been a reporting issuer in all of the Jurisdictions since March 10, 2000 and the Filer's common shares are listed and posted for trading on the Toronto Stock Exchange.
3. The Filer is not in default of any material requirement of the Legislation and is not on the list of defaulting reporting issuers maintained in the Jurisdictions.
4. On August 14, 2003, the Filer obtained the final order and approval from the Ontario Superior Court of Justice under the *Companies' Creditors Arrangement Act* (Canada) for protection from its creditors to allow for development of a restructuring plan (the Restructuring).
5. On March 11, 2005, the Filer's board of directors (the Board) unanimously approved the proposal to convert the Filer to an income fund (the Fund) by way of a plan of arrangement.
6. Under the arrangement the Fund will indirectly acquire 100% of the common shares of the Filer which interests will comprise all of its business and undertaking. The arrangement will, therefore, be considered a "significant acquisition" and the Filer would be required under item 14.2 of NI 51-102F5

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to include in the Circular, among other things, financial statements for each of the three most recently completed financial years of the Filer.

7. The Filer proposes to exclude from the Circular, financial statements as at and for the year ended December 31, 2002 (the 2002 Financial Statements).
8. The 2002 Financial Statements relate to a period prior to the Restructuring, and as such they are of lesser, if any, relevance to the shareholders in considering the arrangement for the following reasons:
 - (a) the Restructuring profoundly altered the Filer, including the creation of a new capital structure;
 - (b) the management was changed, including
 - (i) the appointment of an entirely new board of directors;
 - (ii) the appointment of a new chief executive officer during the Restructuring process; and
 - (iii) the cessation of the involvement of the pre-Restructuring chief executive officer with the Filer's affairs;
 - (c) the Filer's balance sheet as of September 15, 2003 was prepared in accordance with the provisions of The Canadian Institute of Chartered Accountants Handbook Section 1625, "Comprehensive Revaluation of Assets and Liabilities" (fresh start accounting). Under fresh start accounting, the Filer's assets and liabilities were recorded at management's best estimates of their fair values, the deficit was eliminated and the newly created class of common shares was recorded based on fair value determined by independent financial advisers.
9. The Circular will include, in addition to historical financial information for the two most recent financial years, the requisite *pro forma* information.
10. The Filer will include language substantially to the following effect, in the Circular: "Vicwest Corporation's financial results for the 2002 year are publicly available on www.sedar.com. In that year, Vicwest experienced a net loss of \$80.3 million, which was attributable primarily to the write off of an \$84.0 million receivable supporting the Company's senior subordinated notes. The Company obtained an order for protection from its creditors on August 14, 2003."

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Decision

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 financial statements for the years ended December 31, 2003 and 2004 are included in the Circular.

Iva Vranic
Manager, Corporate Finance
Ontario Securities Commission