

2004 BCSECCOM 596

October 8, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Corporate Acquisitions & Reorganizations - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution in connection with a corporate acquisition or reorganization - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer will distribute the shares of the other company as a dividend to the issuer's shareholders; the other company is not a reporting issuer; the issuer has a *de minimis* connection to Canada; the issuer is a reporting issuer in the US; the transaction complies with US securities laws

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

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 Kimberly-Clark Corporation (The Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Makers) 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 prospectus and dealer registration requirements (respectively, the Prospectus Requirements and the Registration Requirements) of the Legislation for the proposed distribution of all issued and outstanding common shares (the Neenah Shares) of Neenah Paper, Inc. (Neenah) to holders of common shares of the Filer (the Kimberly-Clark Shareholders) resident in Canada (the

2004 BCSECCOM 596

Kimberly-Clark Canadian Shareholders) by way of pro rata dividend in kind (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Application

- (a) the Ontario Securities Commission (the OSC) is the Principal Regulator for this application; and
- (b) this decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 – Definitions or in the Agence nationale d'encadrement du secteur financier Notice 14-101 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 is a corporation constituted pursuant to the laws of the State of Delaware. The Filer is a highly focussed and innovative health and hygiene company. Its headquarters are located in Dallas, Texas.
2. Neenah, currently a wholly-owned subsidiary of the Filer, will own the Filer's Canadian pulp business and its fine paper and technical paper businesses in the United States.
3. The Filer's wholly-owned Canadian subsidiary KCI carries on business through offices and facilities located in Ontario, Québec and Nova Scotia.
4. The Filer is not a reporting issuer under the securities laws of any province or territory of Canada and the Filer has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.
5. The shares of common stock of the Filer (the Kimberly-Clark Shares) are listed on the New York Stock Exchange (the NYSE). The Kimberly-Clark Shares are not listed on any Canadian stock exchange and the Filer has no intention of listing its securities on any Canadian stock exchange.
6. As of August 31, 2004, the Filer had approximately 240 registered Kimberly-Clark Canadian Shareholders. Of these, one holds shares pursuant to a trust in favour of approximately 1,100 employees or former employees of the Filer or its subsidiaries resident in Canada. There are registered and beneficial shareholders resident in each province of Canada other than Prince Edward

2004 BCSECCOM 596

Island. As of August 31, 2004 (i) the Kimberly-Clark Canadian Shareholders constituted less than 0.7% of the approximately 36,500 holders of record of Kimberly-Clark Shares worldwide, and (ii) persons resident in Canada collectively held approximately 323,000 Kimberly-Clark Shares, constituting less than 0.066% of the approximately 495,000,000 issued and outstanding Kimberly-Clark Shares. As such, the proportion of issued and outstanding Kimberly-Clark Shares held by Canadian residents is *de minimis*.

7. Subject to obtaining necessary approvals, on a distribution date to be fixed by the Filer's board of directors, the separation of Neenah from the Filer will be accomplished through a pro rata distribution of all of Neenah Shares to Kimberly-Clark Shareholders (the Spin-Off). The Spin-Off consists of the following steps:
 - (a) the general terms and conditions relating to the distribution will be set forth in a distribution agreement between the Filer and Neenah;
 - (b) as a result of the distribution, each Kimberly-Clark Shareholder will receive one Neenah Share for a number of Kimberly-Clark Shares to be fixed by the Filer's board of directors;
 - (c) Kimberly-Clark Shareholders will not be required to pay for Neenah Shares received in the distribution or to surrender or exchange Kimberly-Clark Shares in order to receive Neenah Shares or to take any other action in connection with the distribution; and
 - (d) fractional shares of a Neenah Share will not be issued to Kimberly-Clark Shareholders as part of the distribution nor credited to book-entry accounts.
8. After the Spin-Off, Kimberly-Clark Shares will continue to be listed and traded on the NYSE and Neenah Shares are expected to be listed and traded on the NYSE.
9. Neenah does not intend to list its shares on any stock exchange in Canada.
10. Neenah does not intend to become a reporting issuer in any province of Canada.
11. The dividend and Spin-Off will be effected in compliance with the laws of the State of Delaware.

2004 BCSECCOM 596

12. In July 2004, Neenah filed a Form 10 Registration Statement (the Form 10) with the United States Securities and Exchange Commission (the SEC) detailing the planned Spin-Off.
13. After the SEC has completed its review, Kimberly-Clark Shareholders will receive a copy of the information statement included in the Form 10 (the Information Statement).
14. Because the Spin-Off of Neenah Shares will be by way of dividend to the Kimberly-Clark Shareholders, no shareholder approval of the proposed transaction is required under the laws of the State of Delaware.
15. All materials relating to the Spin-Off and the dividend sent by or on behalf of the Filer or Neenah in the United States (including the Information Statement) have and will be sent, concurrently to the Kimberly-Clark Canadian Shareholders.
16. Following the Spin-Off, each of Neenah and the Filer respectively will send, concurrently to the Kimberly-Clark Canadian Shareholders, the same disclosure materials that it sends to holders of Neenah Shares and Kimberly-Clark Shares with addresses, as shown on its books to be, in the United States.
17. The Kimberly-Clark Canadian Shareholders who receive Neenah Shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off that are available under the laws of the United States to Neenah and Kimberly-Clark Shareholders with addresses in the United States.
18. The proposed distribution of Neenah Shares pursuant to the Spin-Off to the Kimberly-Clark Canadian Shareholders would be exempt from the Prospectus Requirements and Registration Requirements in all Jurisdictions but for the fact that Neenah is not a reporting issuer or equivalent under the Legislation.

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 first trade of Neenah Shares acquired under the decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless:

2004 BCSECCOM 596

- (a) except in Québec, the conditions in section 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; or
- (b) in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

Suresh Thakrar
Commissioner
Ontario Securities Commission

H. Lorne Morphy
Commissioner
Ontario Securities Commission