2006 BCSECCOM 318

April 13, 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 Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2), 114(2)(a)

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia 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
The Toronto-Dominion Bank ("TD" or the "Bank") and VFC Inc. ("VFC")

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 Bank for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Employment Agreements (as hereinafter defined) may be entered into notwithstanding the provisions of the Legislation that prohibit an offeror who makes or intends to make a take-over bid from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or

owner a consideration of greater value than that offered to other holders of the same class of securities (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:
(i) the Ontario Securities Commission is the principal regulator for this application, and
(ii) 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.

"CBCA" means the *Canada Business Corporations Act*, as amended;

"Employment Agreements" means the employment agreements entered into between VFC and each of the Executives dated as of February 15, 2006;

"Executives" mean Charles Stewart, J. Davis Knox, Erik de Witte and Sean A. O'Brien;

"Locked-up Shareholders" means, collectively, the Executives and certain other shareholders of VFC holding, in aggregate, approximately 29.3% of the VFC Shares on a fully diluted basis;

"Offer" means the offer by TD dated March 13, 2006 to purchase all of the VFC Shares, including all VFC Shares issuable upon the exercise of Options and Warrants;

"Options" means all of the currently outstanding options granted pursuant to VFC's stock option plans;

"Options with SARs" means Options which, in addition to being exercisable for VFC Shares, also contain a feature that allows such Options to be surrendered by the holder in exchange for a cash amount equal to the in-the-money value of such Options;

"RSUs" means restricted share units of the Bank issued pursuant to the Bank's existing restricted share unit plan;

"Support Agreement" means the support agreement between the Bank and VFC dated February 15, 2006 pursuant to which the Bank agreed to make the Offer, on the terms and subject to the conditions set out therein;

"TD Options" means stock options of the Bank issued pursuant to the Bank's existing stock option plan;

"TD Shares" means the common shares of the Bank;

"TSX" means the Toronto Stock Exchange;

"VFC Shares" means all of the outstanding common shares of VFC; and

"Warrants" means all of the currently outstanding warrants to purchase VFC Shares.

Representations
This decision is based on the following facts represented by the Bank:

The Bank

1. The Bank is a Canadian chartered bank subject to the provisions of the *Bank Act* (Canada) and was formed on February 1, 1955 through the amalgamation of The Bank of Toronto and The Dominion Bank.

2. The head office and registered office of the Bank are located in the Toronto Dominion Bank Tower, Toronto-Dominion Centre, Toronto, Ontario, M5K 1A2.

3. The Bank is a reporting issuer in each of the provinces and territories of Canada and the common shares of the Bank are listed for trading on the TSX, the New York Stock Exchange and the Tokyo Stock Exchange.

4. The authorized common share capital of the Bank consists of an unlimited number of TD Shares without nominal or par value, of which 716,042,216 were outstanding as of February 28, 2006. The Bank also has certain series of Class A First Preferred Shares outstanding.

VFC

5. VFC is a corporation incorporated under the CBCA by articles of incorporation dated December 14, 1994.

6. VFC is a consumer finance company that provides non-prime automotive purchase financing and consumer instalment loans.

7. The head office and registered office of the VFC are located at 25 Booth Avenue, Suite 101, Toronto, Ontario, M4M 2M3.

8. VFC is a reporting issuer in each of the provinces and territories of Canada and the common shares of VFC are listed on the TSX.

9. VFC has represented to the Bank that its authorized share capital consists of an unlimited number VFC Shares, of which 16,180,345 were outstanding as of February 15, 2006. In addition, VFC has represented to the Bank that, as at February 15, 2006, there were 251,852 outstanding Options that were vested, a further 541,734 Options with SARs of which 235,200 will be vested, and 278,666 outstanding Warrants, each exercisable for one VFC Share, and no other securities convertible into VFC Shares.

The Offer

10. Pursuant to the Offer, the Bank proposes to acquire all of the VFC Shares at a price of $19.50 per VFC Share. Under the terms of the Offer, holders of VFC Shares are entitled to elect to receive, at their option, either cash or a combination of cash and TD Shares.

11. The Offer was made by way of a take-over bid circular dated March 13, 2006 mailed to all holders of VFC Shares and prepared in accordance with the Legislation.

12. The Bank and VFC have entered into the Support Agreement pursuant to which the Bank agreed to make the Offer on the terms and subject to the conditions set out therein.

13. The Bank has also entered into lock-up agreements with the Locked-up Shareholders dated February 15, 2006 pursuant to which the Locked-up Shareholders have agreed to deposit under the Offer all of the VFC Shares owned or controlled by the Locked-up Shareholders, including VFC Shares issuable upon the exercise of outstanding Options and Warrants.

14. The board of directors of VFC has unanimously recommended in its directors circular dated March 13, 2006 that its shareholders accept the Offer.

15. Following the successful completion of the Offer, it is currently intended that VFC will remain a direct or indirect subsidiary of the Bank but that it will continue to operate under its existing brand.

Employment Agreements

16. Each of the Executives has entered into an Employment Agreement with VFC dated February 15, 2006, setting out the terms and conditions of his continued employment with VFC, which agreement is conditional upon the Bank taking up VFC Shares under the Offer.

17. Mr. Stewart's Employment Agreement provides that he will assume the position of Managing Director of VFC. Mr. Stewart is currently the President and Chief Executive Officer of VFC. His Employment Agreement provides that he will receive the following compensation:

    (i) until the end of the 2008 fiscal year, an annual base salary of $200,000; and

    (ii) a one-time award of RSUs with a face value at the date of grant of $1,000,000.

18. Mr. Stewart's salary in 2005 was $250,000 and in 2005 he received a bonus of $300,000. Mr. Stewart was also granted 30,000 Options with SARs in 2005.

19. Mr. Knox's Employment Agreement provides that he will assume the position of Managing Director of VFC. Mr. Knox is currently the Chief Operating Officer, Secretary and Treasurer of VFC. His Employment Agreement provides that he will receive the following compensation:

    (i) until the end of the 2008 fiscal year, an annual base salary of $200,000; and

    (ii) a one-time award of RSUs with a face value at the date of grant of $1,000,000.

20. Mr. Knox's salary in 2005 was $250,000 and in 2005 he received a bonus of $300,000. Mr. Knox was also granted 30,000 Options with SARs in 2005.

21. Mr. de Witte's Employment Agreement provides that he will assume the position of Chief Executive Officer of VFC. Mr. de Witte is currently the Chief Financial Officer of VFC. His Employment Agreement provides that he will receive the following compensation:

    (i) until the end of the 2008 fiscal year, an annual base salary of $210,000;

(ii) until the end of the 2008 fiscal year, Mr. de Witte is eligible to participate in an annual bonus plan with an annual bonus plan target of $120,000 and an annual bonus plan maximum of $200,000;

(iii) until the end of the 2008 fiscal year, Mr. de Witte will be eligible to receive annual equity awards based on an annual target of $100,000. These awards will be a mix of RSUs and TD Options as determined by the Bank;

(iv) a one-time award of RSUs with a face value at the date of grant of $1,500,000; and

(v) as additional performance-related equity awards, Mr. de Witte will receive RSUs with a face value on the date of grant of up to $250,000 after each 12 month period ending April 30th, 2007, 2008 and 2009, conditional upon the achievement of the business plan as determined by the Bank.

22. Mr. de Witte's salary in 2005 was $210,000 and in 2005 he received a bonus of $200,000. Mr. de Witte was also granted 20,000 Options with SARs in 2005.

23. Mr. O'Brien's Employment Agreement provides that he will continue in his current position of Vice President Business Relations of VFC and that he will receive the following compensation:

(i) until the end of the 2008 fiscal year, an annual base salary of $150,000;

(ii) until the end of the 2008 fiscal year, Mr. O'Brien is eligible to participate in an annual bonus plan. His annual bonus plan target will be $115,000 and his annual bonus plan maximum will be $200,000;

(iii) until the end of the 2008 fiscal year, Mr. O'Brien will be eligible to receive annual equity awards based on an annual target of $100,000. These awards will be a mix of RSUs and TD Options as determined by the Bank;

(iv) a one-time award of RSUs with a face value at the date of grant of $500,000; and

(v) as additional performance-related equity awards, Mr. O'Brien will receive RSUs with a face value at the date of grant of up to $125,000 after each 12 month period ending April 30th, 2007, 2008 and 2009, conditional upon the achievement of the business plan as determined by the Bank.

24. Mr. O'Brien's salary in 2005 was $150,000 and in 2005 he received a bonus of $200,000. Mr. O'Brien was also granted 20,000 Options with SARs in 2005.

25. All of the RSU grants, annual equity awards and additional performance-related equity awards set out in the Employment Agreements are governed by the Bank's 2004 Restricted Share Unit Agreement and the Bank's 2000 Stock Incentive Plan, as applicable.

26. Beginning with the 2009 fiscal year in respect of Messrs. de Witte and O'Brien, their compensation mix (as between percentages of base salary, annual bonus and equity compensation) will shift from that described above to be more in line with the compensation of other executives of TD who are at a similar level.

27. Each of the Employment Agreements provides that the Executive may be terminated by VFC at any time for cause, or without cause upon payment of a severance amount initially equal to 18 months of annual base salary and (where the Executive's Employment Agreement provides that the Executive is eligible for an annual cash bonus) 18 months of annual cash bonus, based upon target. The existing employment agreements between VFC and the Executives also provide for 18 month severance packages in the event of the termination of employment; except in the case of Messrs. de Witte and O'Brien, whose severance packages under their Employment Agreements now include 18 months of annual cash bonus based on target, these severance packages are not enhanced under the new Employment Agreements as compared with the existing severance arrangements. Each of the Employment Agreements also provides that the Executive is subject to certain non-competition and non-solicitation obligations which will continue to apply for 12 months after the termination of his employment.

28. Pursuant to escrow agreements dated February 15, 2006 entered into between each of Messrs. Stewart, Knox and de Witte with the Bank and The Canada Trust Company, as escrow agent, on the date that the Bank pays for VFC Shares pursuant to the Offer, each such Executive will deposit into escrow the TD Shares (the "Escrowed TD Shares") issued to them as consideration for VFC Shares under the Offer in respect of at least 117,950 (in the case of Messrs. Stewart and Knox) or 41,030 (in the case of Mr. de Witte) VFC Shares to be deposited by them to the Offer. Such Escrowed TD Shares will be released to the Executive from escrow upon the earlier of June 1, 2009, the termination of the Executive's Employment Agreement due to his death or disability, the termination of the Executive's Employment Agreement by the Bank without cause, and the retirement of the Executive from his position with

VFC with the consent of the Bank. If the Executive resigns from VFC prior to June 1, 2009, the Executive will forfeit his right to receive any portion of the Escrowed TD Shares, and such Escrowed TD Shares will be cancelled.

29. The Escrow Agreements are intended as retention incentives, complimentary to the Employment Agreements, and are designed to reinforce the commitment of such Executives to their continued employment with VFC. These arrangements are also further support to the importance which the Bank places upon the continued employment after the successful completion of the Offer of all of the Executives.

30. The Employment Agreements have been entered into by VFC, with the concurrence of the Bank, solely in connection with securing the services of each of the Executives as an employee of VFC following the successful completion of the Offer in a role appropriate to the plans of the Bank for VFC following such completion, and:

    (i) none of them has been entered into for the purpose, in whole or in part, of increasing the value of consideration paid to the Executive for securities deposited under the Offer; and

    (ii) none of them is, by its terms, conditional on the Executive supporting the transaction or bid in any manner.

31. The compensation packages afforded to each of the Executives in their Employment Agreements reflect the importance of such individuals' participation in both the short and medium term integration of the business of VFC with that of the Bank and its longer term growth. Each of them will have senior strategic and/or operational responsibilities and will play an important role in the continuing operation and growth of the business under its existing brand by, for example: overseeing the development of new financing solutions and the improvement of existing products; maintaining relationships with automotive dealer groups and VFC's other business partners; identifying and pursuing new business opportunities; and managing risk.

32. The Bank is not currently engaged in the specific line of business currently conducted by VFC and it regards the retention of VFC’s existing management at least for a period of time following the successful completion of the Offer as extremely important to a successful integration of VFC with the Bank. Each of the Executives has been employed by VFC for many years (in some cases since the inception of business by VFC) and has been an integral part of the success of VFC to date. The Bank regards this background and knowledge of the business of VFC as being of great importance to the continued success of

VFC and to the integration of VFC with the Bank. Had the Executives not entered into the Employment Agreements, the value of VFC to the Bank would have been considerably reduced and the Bank might well not have agreed to make the Offer.

33. The terms of the Employment Agreements were negotiated at arm's length prior to the execution of the Support Agreement. The Employment Agreements relate solely to each of the Executive's ongoing contribution to the business of VFC as a senior executive following completion of the Offer. The Employment Agreements contain incentives appropriate to the expected role of the particular Executives with VFC following the successful completion of the Offer which relate to the performance of the Bank and, in the case of Messrs. de Witte and O'Brien, to VFC's performance. The terms of the Employment Agreements are commercially reasonable and in accordance with industry practices.

34. The Bank has been advised that the special committee of the board of directors of VFC made a determination that the total salary package being offered to each of the Executives is reasonable.

Decision

Each of the relevant Decision Makers is satisfied that the tests 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.

Paul M. Moore	Suresh Thakrar
Commissioner	Commissioner