

2007 BCSECCOM 142

February 20, 2007

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 - General - An issuer wants to complete a take over bid that meets some, but not all, of the conditions of the exemption set out in s. 98 (1)(d) of the Act (private issuer exemption) - the target company has more than 50 shareholders; the bid will satisfy all other conditions required for an exempt takeover bid under s. 98(1)(d); most of the shareholders are employees, former employees, consultants or former consultants of another entity which is technically not an affiliate of the issuer; all employee shareholders signed a shareholders' agreement when they acquired their shares which provided the issuer with the right to repurchase the employee's shares in certain circumstances

Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - General - An issuer wants to complete an issuer bid that meets some, but not all, of the conditions of the exemption set out in s. 99(g) of the Act (private issuer exemption) - Issuer bid satisfies all conditions of the private issuer exemption except that the issuer has more than 50 shareholders excluding employees; most of the issuer's shareholders are employees, former employees, consultants or former consultants of another entity which is technically not an affiliate of the issuer; all employee shareholders signed a shareholders' agreement when they acquired their shares which provided the issuer with the right to repurchase the employee's shares in certain circumstances

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 98(1)(d), 99(g) and 114(2)

In the Matter of
the Securities Legislation of
British Columbia, Alberta and Ontario
(the Jurisdictions)

and

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

and

In the Matter of

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The Colt Companies and Caravel Investments Ltd.

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 Colt Companies (the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the formal take-over bid requirements (the Take-over Bid Requirements) and issuer bid requirements (the Issuer Bid Requirements) contained in the Legislation shall not apply to trades made in connection with (i) the offer by the Filer (the Colt Offer) for the issued and outstanding Class "A" Common Voting Shares (the Class A Shares) of Caravel Investments Ltd. (Caravel) and (ii) an issuer bid by Caravel for its Class A Shares.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - (a) the Alberta Securities Commission is the principal regulator for this application, and
 - (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer and Caravel:
 - (a) The Filer is a general partnership formed under the laws of Alberta. The Filer is not a reporting issuer (or equivalent thereof) in any jurisdiction of Canada and its securities are not quoted or traded on any published market or stock exchange.
 - (b) A total of 33 corporations (the HoldCos) own a varying number of units of the Filer. Each HoldCo is owned indirectly by an individual who provides or has provided employment services to the Filer.
 - (c) Caravel is a corporation formed by amalgamation under the *Business Corporations Act* (Alberta) (the ABCA). Caravel's articles of

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amalgamation authorize it to issue up to 500,000 Class A Shares and 1,000 Class "B" Preferred Voting Non-Participating Shares (the Non-Participating Shares).

- (d) Currently there are 278 shareholders holding 423,025 Class A Shares of Caravel. Of the 278 shareholders of Caravel, 277 of the Caravel shareholders hold 420,600 Class A Shares and are all persons who are resident in Alberta, British Columbia or Ontario and are current or former employees of or consultants to the Filer (the Employee Shareholders). An affiliate of the Filer currently owns 2,425 Class A Shares of Caravel. There are currently 2 outstanding Non-Participating Shares, which are held in trust by two nominees as trustees for and on behalf of the Filer.
- (e) Caravel was established by the Filer as a special-purpose profit-sharing entity to provide an incentive and compensation structure for key employees of the Filer. Caravel is not a reporting issuer (or equivalent thereof) in any jurisdiction of Canada. Caravel's securities are held solely by the Filer and the Employee Shareholders and are not quoted or traded on any published market or exchange.
- (f) Caravel does not carry on any other business or own any assets other than its contractual entitlements pursuant to a profit-sharing agreement between Caravel and the Filer.
- (g) Each Employee Shareholder is party to a separate contractual agreement among the Filer, Caravel and the Employee Shareholder (the Employee Shareholder Agreements) providing terms of acquisition and ownership of Class A Shares. The Employee Shareholder Agreements include mechanisms for the repurchase or reallocation of Class A Shares in certain circumstances, including (i) upon an Employee Shareholder ceasing to be employed by the Filer, (ii) termination of employment of an Employee Shareholder with the Filer, or (iii) when an Employee Shareholder is invited to become a partner of the Filer.
- (h) Pursuant to a master transaction agreement dated February 7, 2007 (the Agreement), the HoldCos have agreed to combine the operations of the Filer with WorleyParsons Limited (WorleyParsons), a company organized under the laws of Australia whose ordinary shares trade on the ASX Limited. As part of the proposed transaction between the Filer and WorleyParsons, the Filer proposes to undertake certain reorganization transactions, including the acquisition and subsequent transfer of Class A Shares of Caravel.

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- (i) The Colt Offer is being made pursuant to an offer document (the Offer Document) delivered to shareholders of Caravel on February 7, 2007. The Offer Document contains information with respect to (i) the Filer as the offeror; (ii) the proposed transaction involving the Filer and WorleyParsons; (iii) the consideration being offered for each Class A Share; (iv) reasons for the Colt Offer; (v) the Filer's intentions if the transaction is completed as contemplated in the Offer Document; (vi) the mechanics of accepting the Colt Offer; (vii) conditions to the Colt Offer; (viii) the Meeting (as defined herein); (ix) the possible Caravel Repurchase (as defined herein); (x) the reasons for the possible Caravel Repurchase; and (xi) other material information. The Colt Offer is open for acceptance for a period of 10 business days.
- (j) Caravel has called a special meeting of Caravel shareholders (the Meeting) to be held on March 1, 2007 to obtain the Caravel shareholders' approval, pursuant to the Employee Shareholder Agreements, of the Colt Offer.
- (k) In the event that the Filer acquires more than 90% of the Class A Shares under the Colt Offer, it intends to utilize the compulsory rights of acquisition in the ABCA and acquire the balance of the Class A Shares of Caravel. This intention has been disclosed in both the Offer Document and the proxy materials delivered in connection with the Meeting. In the event that the Filer acquires less than 90% of the Class A Shares under the Colt Offer, it may waive the 90% condition in the Colt Offer, take up and pay for the Class A Shares tendered to the Colt Offer, and thereafter direct Caravel to repurchase the balance of the outstanding Class A Shares (the Caravel Repurchase). The Filer estimates that the current repurchase price under the Employee Shareholder Agreements is significantly less than the cash consideration under the Colt Offer, but the Filer will, as described in the Offer Document, pay Caravel an amount sufficient to enable it to effect the Caravel Repurchase at a price equivalent to the Colt Offer price.
- (l) As a result of the provisions dealing with “affiliated” companies and “controlled” companies in the Legislation, the “private issuer” exemption from the Take-over Bid Requirements and the Issuer Bid Requirements contained in the Legislation is not available.
- (m) If the Filer were an “affiliate” of Caravel, holders of Class A Shares who are current or former employees of the Filer would not have to be counted for the purposes of the 50 shareholder maximum contained in the “private issuer” exemption set forth in the Legislation and, consequently, there would be an aggregate of 3 (33 if consultants are distinguished from

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employees) shareholders of Caravel excluding those shareholders currently or formerly in the employment of Caravel or its “affiliates” (the Filer).

- (n) Given that (i) Caravel is not a reporting issuer (or equivalent thereof) in any jurisdiction of Canada and (ii) there is no published market in respect of the Class A Shares, if Caravel and the Filer were treated as “affiliates” for the purposes of the Legislation there would be less than 50 shareholders of Caravel, exclusive of those currently or formerly in the employment of Caravel or an affiliate thereof, and therefore both the Colt Offer and the Caravel Repurchase, if effected by Caravel, would be exempt from the Take-over Bid Requirements and the Issuer Bid Requirements on a similar basis to the “private issuer” exemptions in the Legislation.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that:
 - (a) the Colt Offer is exempt from the Take-over Bid Requirements; and
 - (b) the Caravel Repurchase is exempt from the Take-over Bid Requirements and the Issuer Bid Requirements.

William S. Rice, QC, Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission