

2007 BCSECCOM 547

September 4, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Rules, Section 162(3) Exemption from the requirement to include a formal valuation of the offeree issuer in an insider bid circular - An issuer wants relief from the requirement to obtain a formal valuation in connection with its insider bid for the outstanding common shares of a target company - The offeror has not had any board or management representation with the target company in the last 12 months; the offeror does not have access to any material information concerning the target company or its securities that have not been publicly disclosed; the offeror can rely on exemptions from the requirement to obtain a valuation and disclose prior valuations in OSC Rule 61-501 or Québec Policy Q-27

Applicable British Columbia Provisions

Securities Rules, B.C. Reg. 194/97, s. 162(3)

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and
Newfoundland & Labrador
(the Jurisdictions)

and

In the Matter of the Mutual Reliance Review System

and

In the Matter of
Vaaldiam Resources Ltd.
(the Filer)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Makers) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and Newfoundland & Labrador (the Jurisdictions) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

2007 BCSECCOM 547

- (a) in all of the Jurisdictions, the Filer be exempt from the requirement under the Legislation (the Valuation Requirement) that the offer or circular in respect of an "insider bid" contain a summary of a valuation of the offeree issuer in connection with the Filer's offer (the Offer) to purchase all of the issued and outstanding common shares (the "Common Shares") of Great Western Diamonds Corp. (Great Western) not currently owned by the Filer (the Valuation Relief); and
 - (b) in Manitoba, Nova Scotia and Newfoundland & Labrador only, the Filer be exempt from the Valuation Requirement in connection with any second step business combination or going private transaction pursued by the Filer (the Second Step Relief).
- 2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):
 - (a) the Alberta Securities Commission is the principal regulator for this application; and
 - (b) this MRRS decision evidences the decision of each Decision Maker.

Interpretation

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

Representations

- 4. The decision is based on the following facts represented by the Filer:
 - (a) The Filer is a corporation incorporated under the Canada Business Corporations Act. The Filer's head and registered offices are located at Toronto, Ontario.
 - (b) The consideration under the Offer will consist of common shares in the capital of the Filer at a ratio to be determined.
 - (c) Santa Elina Mines Corporation (SEMC), a Brazilian corporation, owns approximately 34% of the common shares of the Filer and indirectly owns approximately 32% of the Common Shares of Great Western. Accordingly, the Offer technically will be an "insider bid" for purposes of the Legislation.
 - (d) The Filer intends to mail to all holders of Common Shares the Offer and a circular (the Circular) prepared in compliance with the Legislation.

2007 BCSECCOM 547

- (e) Neither the Filer nor SEMC has, or has ever had, any board or management representation in respect of Great Western, or, after reasonable inquiry, has knowledge of any material information concerning Great Western or its securities (other than in respect of the Offer) that has not been generally disclosed.
- (f) In making the Offer in Ontario and Quebec, the Filer intends to rely on the exemption available from the equivalent of the Valuation Requirement in connection with an "insider bid" in subparagraph 2.4(1)2 of Ontario Securities Commission Rule 61-501 Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions (Rule 61-501) and subparagraph 2.4(1)2 of Autorité des marchés financiers Regulation Q-27 Respecting Protection of Minority Shareholders in the Course of Certain Transactions (Q-27).
- (g) The Filer will provide relevant disclosure in the Circular in order to enable it to rely on the exemptions in Rule 61-501 and Q-27.
- (h) In connection with any second step business combination or going private transaction, the Filer intends to rely on the exemption available under subparagraph 4.4(1)5 of Rule 61-501 and subparagraph 4.4(1)4 of Q-27 in that:
 - (i) the second step business combination or going private transaction will be effected by an offer following the Offer and will be in respect of Common Shares;
 - (ii) the second step business combination or going private transaction will be completed no later than 120 days after the date of expiry of the Offer;
 - (iii) the consideration per security that security holders will be entitled to receive in the second step business combination or going private transaction will be:
 - A. at least equal in value to and in the same form as the consideration per Common Share that is being paid by the Filer under the Offer; and
 - B. in common shares of the Filer, which is the same form as the consideration being paid by the Filer under the Offer.

2007 BCSECCOM 547

- (iv) the intent of the Filer to effect a second step business combination or going private transaction will be disclosed in the Offer and the Circular.
- (v) the Offer and the Circular will disclose:
 - A. that if the Filer acquires Common Shares under the Offer, the Filer intends to acquire the remainder of the outstanding Common Shares by a second step business combination or a going private transaction; and
 - B. the expected tax consequences of the Offer and the second step business combination or going private transaction, to the extent currently known to the Filer.
- (i) In accordance with paragraph 6.8 of Rule 61-501, the Filer will disclose in the Offer and Circular that, after reasonable inquiry, the Filer is not aware of any prior valuation (as that term is defined in Rule 61-501).
- (j) The Filer intends to commence the take-over bid as soon as possible.

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 pursuant to the Legislation is that the Valuation Relief is granted provided that the Filer complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.
- 7. The decision of the Decision Makers in Manitoba, Nova Scotia and Newfoundland & Labrador under the securities legislation in those jurisdictions is that the Second Step Relief is granted provided that the Filer complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.

Blaine Young
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Alberta Securities Commission