

2002 BCSECCOM 627

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - exemption from the requirement contained in MI 45-102 for a qualifying issuer to have a current AIF filed on SEDAR to permit issuer to use CPC information circular without financial statements of a target issuer and without a pro forma balance sheet

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities*, ss. 1.1 and 4.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA AND BRITSH COLUMBIA

AND

IN THE MATTER OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF COBRA VENTURE CORPORATION

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in each of the provinces of Alberta and British Columbia (the “Jurisdictions”) has received an application from Cobra Venture Corporation (“Cobra”) for a decision under section 4.1 of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) that the requirement contained in MI 45-102 for a qualifying issuer to have a current AIF filed on SEDAR shall not apply to Cobra;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS Cobra has represented to the Decision Makers that:

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- 3.1 Cobra was incorporated on March 29, 2000 pursuant to the provisions of the Business Corporations Act (Alberta);
- 3.2 Cobra is a reporting issuer under the securities legislation in each of the Jurisdictions (the "Legislation") and is not in default of its obligations under such Legislation;
- 3.3 Cobra's common shares are listed and posted for trading on the Canadian Venture Exchange Inc. doing business as TSX Venture Exchange (the "Exchange");
- 3.4 Cobra's authorized share capital consists of unlimited common shares without par value, and an unlimited number of preferred shares, issuable in series, of which 2,830,000 common shares and no preferred shares and outstanding as of June 4, 2002;
- 3.5 pursuant to an Agreement of Purchase and Sale for Petroleum and Natural Gas Assets dated effective January 18, 2002, as amended effective March 14, 2002, Cobra agreed to acquire certain petroleum assets from Charter Oil Corporation ("Charter") a private company incorporated under the Company Act (British Columbia) (the "Proposed Transaction");
- 3.6 the Proposed Transaction constitutes Cobra's "qualifying transaction" under Exchange Policy 2.4 Capital Pool Companies; completion of the Proposed Transaction is subject to a number of conditions, including final acceptance of the Proposed Transaction by the Exchange and completion of the Financing (as defined below);
- 3.7 Cobra wishes to raise up to a total \$1,600,000 through a non-brokered private placement (the "Financing") in order to, amongst other matters, cover the costs in relation to the Proposed Transaction, to fund the exploration program on the properties to be acquired and to fund additional mineral property acquisitions;
- 3.8 under the Financing, Cobra will issue up to 1,000,000 units (the "Units") to purchasers at a price of \$1.60 per Unit, with each unit consisting of one common share in the capital of Cobra and three flow through shares; a finders fee of up to 10% of the proceeds raised in addition to the issue of options to acquire up to 10% of the total number of common shares issued under the Financing may be payable by Cobra to a finder with respect to the placement of up to 1,000,000 of the Units;

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- 3.9 as part of the Proposed Transaction, Cobra will issue 400,000 common shares to Charter as partial consideration for the acquisition of the assets under the Proposed Transaction (the “Acquisition Shares”);
- 3.10 the Exchange approved the contents of Cobra’s Information Circular and waived the requirement for the Information Circular to contain a pro forma financial statement and audited financial statements for the assets to be acquired under the Proposed Transaction;
- 3.11 shareholder approval of the Proposed Transaction was received at a general and special meeting of shareholder of Cobra held on May 29, 2002;
- 3.12 in MI 45-102, the definition of “current AIF” includes a CPC information circular filed in any jurisdiction that includes:
 - 3.12.1 audited financial statements for the issuer’s most recently completed financial year;
 - 3.12.2 audited financial statements for the target issuer’s most recently completed financial year; and
 - 3.12.3 a pro form balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor;
- 3.13 therefore, there were no target company financial statements available to be filed and no pro forma financial statements were prepared; therefore, the Circular is not a “current AIF” as defined in MI 45-102 and as a result, Cobra is not a “qualifying issuer” for the purposes of MI 45-102;
- 3.14 the Circular was filed on SEDAR on April 26, 2002;
- 4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- 5. AND WHEREAS 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. AND WHEREAS the Decision of the Decision Makers under MI 45-102 is that:

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- 6.1 under section 4.1 of MI 45-102, Cobra is exempt from the requirement contained in the definition of Qualifying Issuer to have a Current AIF filed on SEDAR provided that:
 - 6.1.1 Cobra files a Form 45-102F on or before the tenth day after the distribution date of the Units (including the Finder's Fee Units) and the Acquisition Shares certifying that it is a Qualifying Issuer except for the requirement that Cobra have a Current AIF; and
 - 6.1.2 at the distribution date of any of the Units (including the Finder's Fee Units) and the Acquisition Shares, Cobra has filed a notice on SEDAR advising that it has filed the Circular as an alternative form of AIF and identifying the SEDAR project number under which the Circular was filed; and
- 6.2 this order expires 140 days after Cobra's financial year ended November 30, 2002.

DATED this 9th day of July, 2002.

Glenda A. Campbell, Q.C., Vice-Chair

Wendy E. Best, Q.C., Member